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HISTORY  
OF  
THE BENCH AND BAR  
OF  
MINNESOTA.

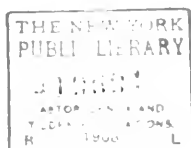
PREPARED UNDER THE DIRECTION OF THE LATE

HIRAM F. STEVENS.

**ILLUSTRATED WITH STEEL ENGRAVINGS  
AND HALF-TONES.**

VOL. I.

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## PREFATORY NOTE.

When the effort to compile this publication began, the publishers arranged with the late Hon. Hiram F. Stevens to become its editor. Mr. Stevens acted in that capacity until ill health compelled him to abandon active work. With that fearless determination which was characteristic of Hiram F. Stevens, he refused to take the rest which he had earned by his devotion to every duty which he undertook, until it was too late to restore a vitality worn out by too long and constant application to his professional labors. Mr. Stevens' illness compelled delay in the issue of these volumes, and his untimely and deeply deplored death enforced the publication of "The Bench and Bar of Minnesota" without the full aid of his editorial ability.



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Wm Mitchell

# HISTORY OF THE BENCH AND BAR OF MINNESOTA

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## CHAPTER I.

### PERTAINING TO WHAT IS NOW MINNESOTA BEFORE IT BECAME A STATE.

Prior to the organization of Minnesota territory, March 3, 1849, the administration of the white man's law in the district now comprising the state was practically unknown. The small and scattered frontier settlements and the trading posts comprised the sole seats of white occupation—although within the jurisdiction, for the most part, of the transitory and shifting territorial governments of the northwest—and little or no control of law was exercised over the pale-faced inhabitants. The Indians of the country were in tribal organization and wards of the general government, and not subject to the laws of states or territories. The small garrison at Fort Snelling was, of course, under military law.

It would seem that the condition of the few white people in Minnesota in the very early periods was like that of the ancient Jews in the days "when there was no king in Israel, but every man did that which was right in his own eyes." (Judges 17-6.) The people of Minnesota settled their disputes, civil and criminal, among themselves, without the intervention of any tribunal. Only one term of a higher court than that of a justice of the peace was ever held within

the present limits of the state prior to the organization of the territory in 1849.

The territory of Wisconsin was organized in 1836. Its boundaries included all the country west of Lake Michigan to the Mississippi, and all within these limits north of the northern boundary of Illinois to the British Possessions. Practically all of what is now eastern Minnesota, was, therefore, a part of Wisconsin from 1836 to 1849. Wisconsin territory was originally within the limits of the Northwest territory, which was ceded by the state of Virginia to the United States in 1783. Long before that year it was British territory, and it is in the history of English rule that the first record is found of a court having jurisdiction over any part of what is now Minnesota. The first proclamation for civil administration of law in the region west of the Wabash river was made by the British governor November 21, 1768, and the first court was held at Fort Chartres, on the Illinois bank of the Mississippi, twenty miles below St. Louis, on December 6th of that year.

The next court in Wisconsin was held by Judge Reaume at Green Bay in 1820. Judge Reaume held a commission as judge from the governor of Indiana territory. He had settled at Green Bay in 1790, and at one time held a judicial position under British authority at Detroit, Michigan. There is a tradition that for some time after his location in Wisconsin he was recognized as a judge under his former warrant from King George.

As a part of Indiana, Illinois, Michigan and Wisconsin the eastern part of Minnesota was respectively and by turn under the government, including the judicial authority, of these several territories. It was, however, under the government of Wisconsin only that the formalities of courts in this region east of the Mississippi were exercised. The country west of the river was from 1836 under the jurisdiction of the territory of Iowa until December 28, 1846, when Iowa was admitted into the union as a state. No court but that of a justice of the peace was ever held in what is now Minnesota under Iowa's authority.

The first criminal offense in Minnesota whereof the perpetrator was regularly arrested and tried in a Wisconsin court was committed at Leech Lake in 1836. Alfred Aitkin, a young trader in charge of a post at the lake, and who was the mixed blood son of Wm. A. Aitkin (for whom Aitkin county was named), was murdered by a Chipewewa Indian. The young man's father, who was a trader at Sandy Lake, had the murderer arrested and taken to Prairie du Chien, the county seat of Crawford county, and indicted by the grand jury. On his trial he was prosecuted by Hon. Thomas P. Burnett and defended by counsel appointed by the court. It was shown that the murdered man was a mixed-blood Indian and was, in the eyes of the law, an Indian proper; that the murderer was also an Indian was admitted. Criminal offenses between Indians were not taken cognizance of by the territorial laws and courts, so that the court decided it had no jurisdiction in this case, and the prisoner was discharged.

In 1838 Joseph R. Brown made a claim on Grey Cloud island, on the Mississippi (now a part of Washington county), established a trading post and held, by appointment from the governor of Wisconsin territory, the office of justice of the peace for some years. During his incumbency he held a few civil trials, but his records are lost and the particulars cannot now be given.

Joseph Renshaw Brown was one of the most remarkable men connected with the history of Minnesota, and deserves more than passing notice in any published work relating to the interests of the state. He was born in Harford county, Maryland, January 5, 1805. When but fourteen years of age he joined the regular army as a drummer boy, and in 1819 came to Minnesota with the first detachment of troops under Colonel Leavenworth that built Fort Snelling. In 1825 he left the army and engaged as an Indian trader in Minnesota. In 1840, 1841 and 1842 he was elected to the Wisconsin territorial legislature and served in the sessions of these years as a representative of St. Croix county. It was he who had the county organized. He was a member of the Stillwater convention of 1848, and it was he who gave the name Minnesota to our territory. He

held numerous offices in the territory. He was at one time editor of the Pioneer Press; laid out the first town site in Minnesota; rafted the first lumber down the St. Croix; built the first frame and the first stone house; laid out the first wagon road, etc. During the Indian outbreak of 1862 he served as major of militia and commanded the whites in the battle of Birch Coulee. He was allied to the Sioux nation by marriage, spoke their language, had great influence over them, and was their agent at one time. Major Brown died in 1870.

In 1843 Henry Jackson, the first merchant in St. Paul, was appointed a justice of the peace of St. Croix county, with his office at the foot of Robert street. He had several civil trials before him, performed marriage services, etc.

The country in Minnesota west of the Mississippi was a part of the Louisiana purchase of 1803. In 1836, when the territory of Iowa was created, it became a part of that territory, and was attached for judicial purposes to Clayton county. In 1836 Governor Chambers appointed Henry H. Sibley—Minnesota's most prominent character in her early history—a justice of the peace for Clayton county; by reappointment he held the office for some years. General Sibley, at the time, was at Mendota, as chief factor in the northwest for the American Fur company, and therefore was a citizen of Iowa territory.

General Sibley was not only a justice of the peace with powers to administer the law, but he frequently was called upon to act as arbiter in the settlement of controversies out of court. His legal jurisdiction extended over the vast area now comprised in northern Iowa, southern and southwestern Minnesota and the eastern part of South Dakota. His authoritative power was almost unlimited, for his action was never reviewed by superiors; but as he was a man of high character and ability, it is not believed that he ever misused his prerogatives. And yet the exigencies of exact justice on the wild frontier made it necessary sometimes that he should not confine himself to the exact limits of his authority. A few instances may be given upon this point:

In September, 1839, on the north side of the Mississippi, within the present limits of St. Paul, one Edward Phelan (commonly pronounced Phalen) murdered one John Hays, by beating in his head with a bludgeon. Phelan and Hays were both discharged soldiers from Fort Snelling, and had been living on a partnership claim, where the murder was committed, for some months. Hays was known to have some money which, together with his share in the claim and some other property, was the motive for the murder.

There was no doubt of Phelan's guilt. Justice Sibley, at Mendota, issued a warrant for his arrest, he was taken into custody, and on September 28th was given a preliminary examination before the Iowa magistrate. The evidence adduced was sufficient to justify his commitment on the charge of murder in the first degree. He was confined in the guard house at Fort Snelling until the arrival of the next steamboat from below, when he was sent to Prairie du Chien, the county seat of Crawford county, Wisconsin territory—in which territory the crime had been committed—to await the action of the grand jury of that county.

It was plain that Justice Sibley's action in committing Phelan was illegal. He was an Iowa territory magistrate and had no jurisdiction over offenses committed on the opposite side of the Mississippi, in Wisconsin. But the authorities at Prairie du Chien, certain that Phelan was the murderer, waived the point, and no attorney appearing with a writ of habeas corpus, Phelan was held until the meeting of the grand jury, which did not convene for six months, or until in March, 1840. Then, a cold winter still ruling, the river frozen, the long distance intervening between the county seat and the scene of the crime, made the attendance of witnesses before the grand jury impossible, and the murderer was discharged.

With a nerve possessed by only such a character, Phelan straightway came back to St. Paul (then called Pig's Eye) and demanded his claim from Vetal Guerin, who had taken possession. Guerin threatened him with great bodily harm if he should persist in his demand. Whereupon Phelan repaired to Justice Joseph R. Brown, on Grey

Cloud island, twelve miles below St. Paul, and sought to recover possession by law. After Justice Brown had learned the facts he informed Phelan that he had been absent from his claim "for more than six months at one time," and therefore, under the law, he had lost all title to it, and Guerin could not be ejected.

Thereafter Phelan made Guerin no trouble, but in time took and sold four other claims, all within the present limits of St. Paul. One of these was on the lake which still, unjustly, bears his name, and is one of the principal sources of the city's public water supply. In 1850, by the first grand jury of Ramsey county, he was indicted for perjury. Before arrest he fled the country, started for California in a wagon train across the plains, and was lynched en route by his fellow travelers for some misdeed. His original claim, subsequently taken by Vetal Guerin, comprised the present site of the St. Paul city and county court house and much other valuable property.

In the winter of 1842 Justice Sibley had another criminal case before him. A Frenchman, who had been employed by the fur company, committed a rape upon a little French girl of eleven years. The crime was perpetrated in a sleigh on the river ice near Fort Snelling. The locality of the crime gave the justice jurisdiction. The prisoner was bound over to the grand jury of Crawford county, Wisconsin, and he, too, was sent to Prairie du Chien. But, as in Phelan's case, no witnesses appeared before the grand jury, and so he also was discharged. He never returned to Minnesota, however.

In his published reminiscences of early days General Sibley says:

"As I was the only magistrate in this region, and the county seat of my county (Clayton) was some 300 miles distant, I had matters pretty much under my own control, there being little chance of an appeal from my decisions. In fact, some of the simple-minded people around me believed that I had the power of life and death. On one occasion I issued a warrant for a Canadian, who had committed an outrage and then fled from justice. I dispatched a trusty constable in pursuit and he overtook the man below Lake Pepin and brought him back in irons. The friends of the culprit begged hard that he should not be severely punished, and, after keeping him in durance

vile for several days, I agreed to release him if he would leave the country, threatening him with dire vengeance if he should ever return. He left in great haste and I never saw him afterwards."

Of the three justices of the peace who have been named—Sibley, Brown and Jackson—while neither was a Solon, neither was a Dogberry. Not one of their decisions was a travesty on justice. Yet sometimes a humorous incident occurred in these primitive courts. In his reminiscences General Sibley relates how Joseph R. Brown pleasantly but equitably decided a case that came before him in his office on Grey Cloud island.

Two Canadian Frenchmen, named Pierre Parrant and Michel Le Claire, claimed the same tract of land, under the government claim laws. The locus in quo was at Pig's Eye, a mile or so east of the present limits of St. Paul. The justice doubted his authority to decide questions of title to land, yet he was unwilling to allow the dignity of his official station to be impaired in the estimation of the simple people about him by an avowal of his doubt. He therefore heard the evidence pro and con, and having ascertained that the claim in dispute had not been staked out, as provided by law and in accordance with custom, he decided against the validity of both parties. This decision was supplemented by another in advance that the land would become the property of him who should first reach it and stake it out.

The decisions were accepted by both litigants and at once they set out for the claim. Neither had a horse and a foot race for more than eight miles resulted, and was watched with much interest by the spectators. Le Claire proved the fleetest and more long-winded runner, and succeeded in placing his landmarks, in the presence of witnesses, before his exhausted and panting competitor. Parrant accepted the situation and made no further contest. Le Claire pre-empted the land, lived upon it for several years, and finally died there.

There were other instances in the early days of Minnesota when superiority in rapid movement was the means of securing a valuable tract of land by pre-emption. The case of Le Claire vs. Parrant (or

vice versa) was, however, the sole case of which we have any knowledge wherein superior fleetness of foot was made to decide a legal controversy in obedience to the fiat of a magistrate. And yet the equity and justice of the magistrate's decision and of the final settlement of the action cannot, even now, well be challenged.

General Sibley has left upon record his recollection of another strange, or at least remarkable, magistrate of early days. This official, however, held his position after Minnesota had been organized as a territory. Who he was the general does not inform us, but says he did not live "a hundred miles from Kaposia," which was the Indian village of Little Crow, on the Mississippi, a few miles east of St. Paul.

The justice was called upon to decide a cause between two litigants who agreed to waive the right of a jury trial. After hearing the evidence the magistrate promptly decided in favor of the plaintiff. Whereupon the defendant, exercising the defeated American litigant's privilege to "cuss the court," upbraided the magistrate in vigorous terms, accusing him of partiality, injustice, and what not. But for the intervention of the bystanders there would have been a fisticuff between the court which considered itself insulted and the litigant who considered himself aggrieved. As he was prevented from obtaining a verdict against the plaintiff by the decision of the magistrate, and from obtaining satisfaction by pummeling the magistrate, the defendant appealed from the decision to the district court.

When the writ was served upon the justice, ordering him to produce a transcript of his docket and the other papers in the case, he refused to obey, but sent an elaborate written reply to the district judge, who had issued the usual mandate in such cases. In this paper, which was in the form of an address, the justice wrote that there was "no sense in an appeal," and that the judge had "done wrong" in granting it; that the appellant had abused him—the justice—and was "a mean scamp" anyhow; and finally that if the judge wanted the papers in the case he might "look for them" or get them the best way he could, for he—the justice—would have nothing

further to do with the matter. The letter was duly dispatched and received by the judge. "I heard it read in court by the clerk," says General Sibley, "and I doubt if ever another document produced a greater sensation in a court room than that did."

In connection with General Sibley's residence in what was then called Iowa, it may here be stated as a fact not well known that all that portion of Minnesota now west of the Mississippi and south of the Minnesota river came very near becoming a permanent part of the Hawkeye state. The first proposed constitution for that state contained a provision to that effect; but this constitution was voted down by the people.

Through the personal efforts and influence of Joseph R. Brown, the territorial legislature of Wisconsin, in session at Madison, passed, January 9, 1840, an act (to take effect in August of that year) creating the county of St. Croix, with the following boundary line:

"Commencing at the mouth of the Porcupine river, on Lake Pepin [in the Mississippi]; thence up said river to its first forks; thence on a direct line to the Meadow Fork of Red Cedar river; thence up said river to Long lake; thence along the canoe route to Lac Courti Oreille; thence to the nearest point on the Montreal river; thence down said river to Lake Superior; thence north to the United States boundary line."

The county as created contained a great part of southwestern and western Wisconsin and eastern Minnesota, a large area of territory.

The county seat was fixed at Mr. Brown's warehouse, on the site of a town which he had laid out and called Dakota, now the northern portion of the city of Stillwater. The county commissioners appointed were Hazen P. Mozer, a trader on Grey Cloud island; Samuel Burkleo and Calvin A. Tuttle. Mr. Brown was elected clerk of the courts, register of deeds, treasurer and county commissioner at the election held September 28th.

In 1842 the Wisconsin legislature, of which Mr. Brown was a member at the time, provided that a term of court for St. Croix county should be held at Mr. Brown's warehouse during the ensuing spring. It seems that this provision did not become known to any one in the Minnesota portion of the county save Mr. Brown, the clerk of the court, and who had procured the order from the legislature.

In due course Judge David Irvin, of the Wisconsin territorial court, arrived at Fort Snelling and inquired for the locality of "Brown's Warehouse." There was great surprise among the few white settlers at Mendota when he announced that he had come to hold a term of court for St. Croix county at the "warehouse," for this was something which none had anticipated and which a few had never heard of. The judge was equally surprised when informed that he was thirty-five miles from the so-called county seat, and his disappointment was equal to his surprise. He was furnished a horse by Norman W. Kittson, then a sub-trader at Mendota, and put upon what was then called the St. Croix trail, and, after a tiresome ride across the country, through the woods and over the prairies, reached Brown's big log house on the shores of Lake St. Croix.

With indignant disgust the judge found that no preparation for holding court had been made by Clerk Brown, for the very good reason that there were no issues to be tried and no sort of business for its consideration had been presented. His long journey from Madison had been a waste of time and trouble. He improved the first opportunity to get out of the country and back to civilization, although his sojourn with Mr. Brown was made as pleasant as possible by that accomplished host. Thereafter no further attempt was made to hold a court in St. Croix county for five years, although in the meanwhile quite a number of settlers had come into the country.

In June, 1847, the first term of court in the county was regularly held at Stillwater, then the largest village in what is now Minnesota and a place of promise. Chief Justice Charles Dunn, of the Wis-

consin territorial court, presided. The court convened in the store room of John McKusick. Much interest was manifested by sundry settlers in this term, for the reason that it was the occasion of the trial of "The Wind," an Indian, for murder, and there were not only several witnesses present but a number of spectators.

The incident also furnished an opportunity for a number of attorneys of Wisconsin to visit the St. Croix country. Among those present were Hon. Ben C. Eastman (afterwards a member of congress), of Platteville; Frank Dunn, Samuel J. Crawford, and Moses M. Strong, of Mineral Point; Thos. P. Burnett of Patch Grove, and Hiram Knowlton, of Prairie du Chien. There were other lawyers present, but their names have not been preserved.

Judge Dunn appointed Samuel J. Crawford prosecuting attorney for the term, and Ben C. Eastman the attorney to defend "The Wind." Upon the trial of this case the Indian was acquitted. This was the first jury trial before a district court within the present limits of Minnesota, and this was the only term of court held within the same district while it was a part of Wisconsin territory.

The city of Stillwater has the distinction not only of being the site where the first term of court in Minnesota was held, but it was here where the first steps were taken to provide a court house, or a habitation for courts. The June, 1847, term, held by Judge Dunn, was convened in McKusick's store, but in the fall of that year a subscription paper was circulated to secure funds for the erection of a court house proper. The sum of \$1,200 was raised on condition that the county of St. Croix should appropriate the remainder of the amount needed. This was done and the building was completed during the year 1848.

Following is a copy of this subscription paper, from the unpublished manuscript:

"We, the undersigned, hereby agree to pay the amount set opposite to our several names, to be invested in a court house and jail in the town of Stillwater, to be built according to a plan submitted by Jacob Fisher. Provided, That the county of St. Croix will pay the balance

of the cost of said building after deducting \$1,200 (which amount we propose to raise by this subscription) and pay the same to the holder of this paper, as may be required for the progress of the building.

Stillwater, Dec. 18th, 1847.

John McKusick.....	\$400.00	Wm. Stanchfield (paid).	\$50.00
Jacob Fisher.....	50.00	A. Harris.....	25.00
Churchill & Nelson...	200.00	Jesse Taylor.....	25.00
Orange Walker, for		Wm. Willim.....	25.00
Marine L. Co.....	100.00	C. Carli.....	25.00
Wm. Holcombe.....	50.00	Anson Northrop.....	100.00
John H. Brewster.....	50.00	Nelson McCarty.....	15.00
John Morgan.....	20.00	M. S. Wilkinson.....	15.00"
Wm. Cove.....	25.00		

The first term of the Minnesota territorial court was held in this court house in 1849.

An enabling act was passed by congress in 1846 providing for the admission of Wisconsin as a state, subject to certain conditions. After two efforts on the part of the citizens of the territory to adopt a constitution, one was ratified at an election held March 13, 1848, and Wisconsin became a regularly organized state May 20th following.

By the terms of the organic act the boundaries of the new state were fixed as at present, with the western boundary at the Mississippi and St. Croix rivers, etc. No provision was made for the government of the country west of the St. Croix and east of the Mississippi, formerly constituting a portion of the county of St. Croix. This country was no longer under the jurisdiction of Wisconsin—at least of the state of that name. In the view of many it was a no-man's-land, without organization or government of any sort. It was claimed that even the justices of the peace west of the St. Croix had been legislated out of office by the creation of the state of Wisconsin.

It may be well to remember that many of the members of the Wisconsin constitutional convention, which adopted the constitution finally ratified, strenuously insisted that the Rum river should form a portion of the western boundary of the state, while, on the other hand, the members from the St. Croix valley were desirous that the Chip-

pewa river should be the western limit of Wisconsin. The St. Croix was adopted as a compromise.

But, opposed to the view of those who claimed that the country west of the St. Croix belonged to no organized government, the opinion prevailed among those best qualified to judge that the old territorial government of Wisconsin survived, in full force, within and over that portion of St. Croix county which had been cut off by the creation and admission of the state. In time this opinion was generally accepted, although certain officials declined to attempt the exercise of their former functions until the question should be definitely and authoritatively settled. At once there came a demand for the organization of a new territory with a new name. The territory of Wisconsin was to exist only until its successor could be formed, and the formation of that successor was to be hastened.

The first meeting on the subject of claiming territorial privileges and of the organization of a new territory was held at Henry Jackson's store in the then little hamlet of "St. Paul's," in July, 1848. At this meeting—which was participated in by some ten persons, one of whom, Auguste L. Larpenteur, is yet living—a public convention at Stillwater was proposed to consider the situation. August 4th the people of Stillwater met and the general convention was called to meet in that village August 26th.

The famous "Stillwater convention" met, pursuant to call, August 26, 1848. Sixty-two delegates participated. The permanent officers were Samuel Burkleo, president; Robert Kennedy and Joshua L. Taylor, vice presidents; William Holcombe and David Lambert, secretaries. A committee was appointed to draft a memorial to congress "for the early organization of the territory of Minnesota." The author of this resolution was Joseph R. Brown, who thus has the distinction of giving to Minnesota its name. A subsequent resolution offered by him was that "the orthography of Minnesota, when the organization of the territory shall be effected, be according to that used in this resolution."

A letter addressed to Hon. William Holcombe (subsequently the first lieutenant governor of the state) from Hon. John Catlin was read to the convention. Mr. Catlin had been secretary of the former Wisconsin territory, and now claimed to be (under the law) "governor" of what he called "the present territory of Wisconsin." In his letter he advised Mr. Holcombe and his associates to elect a delegate from said "present territory" at an early day, and send him to congress, where "he would be allowed to take his seat in December, and then a government might be fully organized." Hon. John H. Tweedy had been the territorial delegate in congress from Wisconsin, and it would seem that, if the territory still existed, he yet was; but Mr. Catlin said that Mr. Tweedy would resign "if requested," and that when he did so he (Catlin), as "acting governor," would issue a "proclamation for an election to fill the vacancy;" although he added, "I should not like to do so unless the people would act under it and hold the election." He gave it as his opinion that, "if a delegate was elected by color of law, congress would never inquire into the legality of the election." (!) He said that it was the almost universal opinion of the lawyers about Madison "that the government of the territory of Wisconsin still exists, although it is nearly inoperative for want of a court and legislature."

Governor Catlin's suggestions were adopted by the convention which unanimously elected H. H. Sibley to represent the interests of the territory in the next congress, and which requested Hon. John H. Tweedy to resign, directed that memorials to the president and congress be prepared, etc. A certificate that Henry H. Sibley had been "duly elected delegate under a resolution and the action of this convention" was signed by the president, vice presidents, and secretaries, and this furnished his "color of title," although he never claimed his seat under it, being soon after given a stronger certificate and one more in accordance with the forms of law.

Delegate John H. Tweedy obligingly resigned, pursuant to request, so that Delegate (?) H. H. Sibley might be without a rival. In September (1848) Secretary Catlin arrived at Stillwater with his

family, took up a temporary residence, and claiming to be "acting governor of Wisconsin territory" issued, October 9th, a proclamation for a special election, to be held on the 30th day of that month, to choose a delegate to congress "to fill the vacancy occasioned by the resignation of John H. Tweedy." H. H. Sibley and Henry M. Rice were the candidates, and at the election Sibley received a large majority of all the votes cast. His certificate was duly signed by the "acting governor" and in December, upon the assembling of congress, he presented himself for admission to that body.

Sibley's credentials were referred to the committee on elections of the house, composed of nine members, and that committee made a minority and a majority report. The minority report, made by four members, was very strong in argument against the admission of the delegate, claiming that his election had been illegal, that his certificate was invalid, etc. But the resolution of the majority, five members, was adopted, and Mr. Sibley was given his seat as a "delegate from Wisconsin territory" on January 15, 1849. The question of the legality of the election was never judicially passed upon. Neither was "Governor" Catlin's status ever legally considered. He claimed to be "acting governor" vice Governor Henry Dodge, who when Wisconsin became a state was elected United States senator.

The first "lawyer" in what is now Minnesota was Gen. H. H. Sibley, who came to Mendota in 1834 and hung out his sign on his trading house the following year. He had studied law but had never been regularly admitted to the bar, although he had a more thorough and better knowledge of law and its principles than many an attorney duly licensed. He never practiced, for prior to 1847 there was no practice and after that date he was busily engaged otherwise.

Morton S. Wilkinson was the first regularly licensed practicing attorney to locate in Minnesota. In the autumn of 1847 he came to Stillwater and resided there for some years. At that time there was little or no business in the country for one of his profession, and, like many another pioneer attorney, he lived by other means than the practice of law. In time, however, he rose to distinction not only as

a lawyer but in public affairs and finally represented the State of Minnesota with great credit in the United States senate.

During the year 1848 four other lawyers came to the territory. David Lambert and Wm. D. Phillips located in St. Paul. Henry L. Moss and Bushrod W. Lott settled at Stillwater. Lambert was a graduate of Trinity college, Hartford, but came west in about 1840, first to Arkansas and subsequently to Wisconsin. In 1843 he established the Madison (Wis.) Enquirer, which he conducted for about five years, finally disposing of the paper to his brother, Henry A. Lambert. He came to St. Paul in the spring of 1848, took a prominent part in the Stillwater convention and in the efforts for the organization of Minnesota territory, and was regarded as a young man of ability and promise. Some personal misfortune rendered him misanthropic and reckless, and November 2, 1849, while returning to St. Paul from Galena, he leaped from the hurricane deck of the steamboat and was drowned.

Wm. D. Phillips was a Marylander. He was an "odd character," according to the histories. He was not a profound lawyer, but imagined he was an orator, and improved every occasion, often making the occasion, for delivering a speech on various subjects. He took an active interest in public matters, but had little influence.

Bushrod W. Lott was a native of New Jersey, but was admitted to the bar in 1847 at Quincy, Illinois. In 1848 he accompanied Gen. Samuel Leech, of that town, who had been appointed receiver of the land office at St. Croix Falls, when that official came to the territory, and was clerk at the first public land sales in this region. Subsequently he located in St. Paul.

Henry L. Moss came from Platteville, Wisconsin, to Stillwater in April, 1848, and was the next lawyer to settle in Minnesota after Morton S. Wilkinson. Upon the organization of Minnesota territory Mr. Moss was appointed United States district attorney.

Immediately upon his admission to congress Delegate Sibley set to work to secure the organization of Minnesota territory, as determined upon by the Stillwater convention. It was concluded that the

necessary organic act should be introduced from the committee on territories in the senate. It was prepared by Hon. Stephen A. Douglas, of Illinois, chairman of that committee, and as originally drawn provided that Mendota should be the capital of the new territory. Only by the repeated and earnest efforts of the delegate was St. Paul substituted for Mendota. The bill met with considerable opposition in the senate, but was finally passed, mainly through the personal influence of Senator Douglas and Senator Henry A. Dodge, of Wisconsin, and his son, Senator A. C. Dodge, of Iowa.

When the bill came before the house its passage by that branch also was strongly contested. Hon. Henry M. Rice arrived in Washington about this time, on private business, and, having a personal acquaintance with many of the members, was of great assistance to the delegate—his successful rival for the position—in his efforts. The issue was doubtful for some time, but the bill was finally passed in the closing days of the session and signed by President Polk March 3, 1849, the day before the inauguration of President Taylor.

It ought to be remembered that the successful effort to organize the territory was not the first attempt. August 6, 1846, congress passed an act to enable Wisconsin territory to frame a state constitution preparatory to admission into the union of the state, providing for a constitutional convention, etc. The convention met October 5th and adjourned December 16th. Hon. William Holcombe represented St. Croix county in the convention. The constitution framed provided for the western boundary of the proposed new state the St. Croix and Mississippi, thus leaving the region now known as Minnesota without a government as was done when Wisconsin was finally admitted. This constitution was rejected by the people at the special election in April, 1847.

On December 23, 1846, after the first Wisconsin constitutional convention had adjourned, and upon the presumption that its action would be ratified by the people, Hon. Morgan L. Martin, then the delegate from Wisconsin, introduced into congress a bill to organize the territory of Minnesota, the name having been suggested by Joseph

R. Brown. This bill fixed the western boundary of the proposed territory on the Red and Sioux Wood rivers. It was referred to the house committee on territories, of which Stephen A. Douglas was chairman. At the time Mr. Douglas was a member of the house of representatives, and it was a singular coincidence that two years later, when the second bill for the organization of the territory was introduced in the senate, he should be chairman of the committee on territories in that body and have the bill in especial charge.

On January 20, 1847, Mr. Douglas reported the bill to the house, with the recommendation that it be passed, but with the provision that the new territory be called "Itasca," instead of Minnesota. On February 17th the bill passed the house, but in the debate upon its passage there was a discussion as to the name of the territory. Robert Winthrop, of Massachusetts, proposed "Chippeway." Jacob Thompson, of Mississippi (subsequently secretary of the interior), said he disliked Indian names and hoped the territory would be called "Jackson." Mr. Houston, of Delaware, proposed "Washington." All of the proposed substitutes were rejected, and the name in the original bill, Minnesota, inserted, and then the bill passed. It did not come before the senate until the last day of the session, March 3d, when it was called up and "laid on the table," and so, in legislative parlance, "died."

In an unpublished manuscript, now owned by Judge Flandrau, the late Hon. Henry L. Moss says that when he settled in Stillwater in April, 1848, he found Morton S. Wilkinson there, he having come to the place the previous autumn. Moss and Wilkinson were the only lawyers at Stillwater until B. W. Lott came, later in the year. In September, 1849, they were joined by Michael E. Ames, who came directly from Baraboo, Wisconsin. A month or so later L. A. Babcock came, but remained only a few weeks, when he located at Sauk Rapids, Benton county, which county he represented in the first territorial legislature.

"During the year 1848," says Judge Moss, "no courts were held, not even—if I remember correctly—justices' courts. It was

claimed that the country west of the St. Croix was practically without organization, government, or law. The principal business of the attorneys at Stillwater was writing deeds for conveyance of title to owners or claimants of town lots. Titles from the general government to lands were not obtained, or obtainable, until after the land sales at St. Croix Falls, in July. We also drew contracts for the sale of logs and other like papers. In the winter of 1848-9 some business was done before the justices of the peace."

From the time of the arrival of Mr. Moss at Stillwater until the organization of Minnesota territory, when he was appointed United States district attorney, Mr. Moss was deputy clerk of the district court under Joseph R. Brown, who retained his position—or at least the title—of "clerk of the United States district court for the territory of Wisconsin," under his appointment from Judge Irvin until the new territorial organization. Mr. Moss states that although the territory was organized by congress March 3d, the fact was not known at Stillwater until the 9th of April following. The news reached St. Paul the same day.

The only record evidence of legal proceedings in St. Croix county in 1848 is that of the issuance of a writ of attachment (dated May 15th) out of the district court at the suit of Thomas H. West vs. Anson Northrup, for the recovery of \$3,100.39. The record is attested by Hon. Charles Dunn, judge of the district, and signed by Joseph R. Brown, "Clerk D. C. St. C. C., W. T.," in translation, clerk of the district court of St. Croix county, Wisconsin territory. There is no record of a return to the writ, or of any other proceedings in the case, and it seems to have come to naught.

The members of the first territorial supreme court were appointed by President Taylor in 1849. Aaron Goodrich was chief justice, and David Cooper and Bradley M. Meeker were associate justices. Upon the opening of Judge Cooper's first court, he delivered an address to the grand jury which is worthy of preservation and will be found complete in Chapter II.

## CHAPTER II.

### JUDGE DAVID COOPER'S CELEBRATED CHARGE TO THE GRAND JURY.

According to the St. Paul Chronicle and Register of September 1, 1849, Judge Cooper's court was held in the trading company's warehouse at Mendota, Monday, August 27th. Governor Ramsey was seated on the right hand of Judge Cooper and Chief Justice Goodrich on his left. The court ceremonies were unusually solemn and elaborate. The grand jury was impaneled with H. H. Sibley as foreman. A number of the grand jurors were Frenchmen, who did not understand English, and Wm. H. Forbes, the court interpreter, explained to them the nature and import of their oaths and the substance of the judge's charge.

There was no business for the grand jury and no bills found, and no business transacted in the court save the admission of two or three attorneys. M. S. Wilkinson was present as assistant United States district attorney, and Colonel Mitchell, the United States marshal, discharged his appropriate duties. The officers and attorneys of the court were entertained by General Sibley at his historic and hospitable mansion, still standing.

The charge of Judge Cooper to the grand jury was considered a remarkably able one, worthy of preservation and study, and by particular request it was published in full in the Chronicle and Register, as was the judge's address to the members of the bar in attendance; these were M. S. Wilkinson, A. M. Mitchell, Alex. Wilkin, Geo. W. Smith, W. D. Phillips, P. P. Bishop and J. Ziegler.

Judge Cooper's charge to the grand jury was as follows:

"Gentlemen of the Grand Jury—You have just been empaneled as grand jurors composing the grand inquest for the third judicial district of Minnesota and sworn to the exercise of a very important

part of the administration of public justice. You are thus occupying a position midway, as it were, between the rights of the citizen and the liberty and well being of the country; and, while you are constituted the safeguards of the lives, the liberties, the good names and the fortunes of the former, you are the sentinels placed upon the outposts whose duty it is to give warning when danger or misdeed menace the perpetuity of the latter.

"A grand jury is one of the inseparable incidents to a republican form of government—a form of government ingenious as it is complex in its architecture, grand and imposing as it is beautiful in its mechanism, with its functions so nicely and so equally balanced that each one is dependent upon the other for the general harmony of all, and the whole put in operation and propelled by the influence of that moral power which, having first brought them into life, now binds them together.

"The system of republican government is rarely understood. It is thus even among the intelligent people of our own country. They feel the salutary operations of our institutions; they are pleased and satisfied with them, and do not attempt to solve the problem of their institution and existence. Perfectly to understand and comprehend the principles, the organism, the simplicity, and yet the intricacies and complexities, of our forms of government, would require years of intense and assiduous application and study.

"The idea that republican forms of government are less complex than monarchical is erroneous. A republic is far the most intricate, a monarchy far the most simple, form of all governments. In a monarchy there is but a single hand, which rules, governs, and counsels the whole system. The hand of the king, and his will, his wishes, and his commands are the only statute books known to his people. His power is despotic; his government a despotism. But in a republic, which is governed by the people themselves, power is distributed into many channels. The people appoint their own ministers, and delegate to them the authority which they exercise. And yet the people—the sole source of power, the makers of their own laws—being conscious of their powers and knowing that it is human to err, have placed guards over themselves, to restrain, and, if needs be, to punish, them. Thus has power been drawn by an enlightened people from the hand of him who would have ruled alone, and regulated and distributed into many branches, so that one may be a check upon

another—baneful to none, beneficial and salutary to all. Like the careful husbandman whose lands are watered by a running brook, which, when swollen by the sudden showers of summer or rendered violent by the melting snows of winter, overflows its banks, destroys his fields, and sweeps before its resistless torrents the fruits of his labor. By patient industry he drains out its volumes into many channels, breaking the violence and destroying the madness of its current, spreading its waters throughout his whole farm, and extending to every part the healthful and invigorating influences which it generates. But power in a monarchical government is like the mountain storm which carries destruction upon its front, and leaves misery, want and desolation in its pathway.

“But while the people have delegated much authority to their public servants, they have, at the same time, retained much within themselves. And perhaps in no single branch of government have they retained more, in many respects, than in that branch to the exercise of which you and I are now called. This arm of authority consists of two distinct and superior parts, a court and a jury—a court quite removed from the influences of popular prejudice, untrammelled by the popular will and uncontrolled by popular wishes or popular desires; a jury composed of the people and so numerous and so frequently changed that it may well and properly be said to be of the people themselves. The court is appointed for a given period of time, so that its action may be also unbiassed and uninfluenced by the government. This is as it should be, inasmuch as it frequently becomes the duty of the court to place itself between the rights of the government and the rights of the citizen, when it is essential to the ends of justice, humanity and reason that its action should be entirely free and independent of the influences of the one or the other, that it may, under all circumstances, properly enforce and impartially administer the law. Thus, although this arm of authority is made up of two separate parts, each in their constitution and being immediately independent of the other, yet so dependent are their operation and usefulness that without a union of both the system of administering public justice would be imperfect and incomplete.

“But, gentlemen of the jury, notwithstanding the aim of each of us is the end of justice, our duties are as distinct as our organization and constitution. Questions of law are entirely and exclusively within the province of the court, while questions of fact are as entirely within

the province of the grand jury. If the question be, Has an act been committed? this is to be determined by the jury; but if the question be, Is the act, if committed, lawful? this is to be decided by the court and not the jury. Our duties are thus so clearly defined that I hope neither of us will be guilty, willfully, of trespassing upon the rights of the other.

"If the court should attempt to control the finding of facts by a jury, unless under peculiar circumstances, its acts would become arbitrary and despotic; and if, upon the other hand, the grand jury should attempt to usurp the power of the court by passing upon matters of law, its conduct would not only be improper but highly pernicious.

"Thus far my remarks to you, gentlemen, have had reference to the subject of juries generally; hereafter I shall treat of your duties particularly. Having now briefly touched upon the form and beauty of our incomparable institutions, having cursorily attempted, crudely and imperfectly, to define the duties and relative positions of courts in the abstract, I will enter more elaborately upon what I apprehend to be your duty as grand jurors under the official oath which you have just taken.

"The first consideration with which I hope fully to be able to impress your minds is that you are exercising a public trust of the greatest moment to your fellow citizens, for upon your determinations will frequently depend, not only their fortunes but their reputations; not only their reputations but their personal liberties; not only their personal liberties, but even their lives; and not only the fortunes, the reputations, the personal liberties, and the lives of the citizen, but the peace and harmony of society and the dignity and well being of government. You will remember that the office which you hold is a respectable one; respectable as it is important; responsible in proportion to the power with which you are invested, and honorable as it is the gratuitous exercise of that branch of public authority. And having placed in your hands the issues of life and death, the weal and woe, the fortunes and good name of your fellow men, the safety of the morals of society, the perpetuity of our institutions, and the peace and dignity of the common weal, you cannot fail to be impressed with the magnitude of your responsibilities; and, being conscious of the fearful power which you wield, you should feel a desire, co-equal and

co-extensive with the obligations which that power implies, faithfully and conscientiously to discharge your duty. To this sacred obligation of honor and public duty is joined another---the solemn and fearful obligation of religion. By the oaths which you have taken you have appealed to God for the fidelity, the sincerity, and the integrity of your official deliberations and presentments. This appeal is not made to any human tribunal, but has already been registered upon the dockets of eternity and will be decreed upon by the Great High Chancellor of Heaven.

"The duties which your oath requires of you are 'diligently to enquire and true presentments make, as well of all such matters as shall be given you in charge, as of those things which you know of your own knowledge; the counsel of the United States, your fellows,' and your own to keep secret; to present no man from hatred, envy, or malice; and to leave no man unpunished from fear, favor, affection, reward or the hope thereof; but to present all things truly as they come to your knowledge, according to your understanding.

"How clearly, distinctly, and beautifully this form points out your duty. Take it as your guide. Diligent inquiry implies assiduous and careful examination of all matters which come before you, as also it implies activity and industry in making your returns to the court. This inquiry should be conducted with due dignity and decorum and, let the crime alleged be of great or small magnitude, you should never proceed in a light or trivial manner.

"Those matters which are given you in charge are, properly speaking, only such as are laid before you by the attorney for the United States. This is done by a formal statement drawn up by him, setting forth the crime alleged, the time, place, and circumstances of its commission. But the court may also give you matters in charge, as where, by the statute, it is required to call your attention particularly to a particular class of offenses. This is only general, however, and you must make the particular application as the cases present themselves. True presentments should always be made. This I need not define.

"Those things which you know of your own knowledge which your oath requires you to present are all infractions of the penal or criminal law, of whatever kind or character, which may come under your own observation, or which you may learn from the observation of others. If you suspect that a crime has been committed, or suspect

the author of such offense, it is your duty diligently to inquire by every means in your power whether such offense has actually been committed and endeavor to discover the offender and bring him to justice. \* \* \*

"What may be the consequences of the crime to the offender or to society, or whether the crime be of a popular class or otherwise, are not questions for your consideration. They belong to the court, to the chief executive, and to the legislature. It is your duty to inquire: Has the accused committed the crime with which he stands charged? and if, from the testimony before you, you feel satisfied that he has, you will so report it to the court, be the consequences what they may. Let the truth, the law and your consciences be your guides in all your conduct and in every deliberation, and there is no danger but you will do your duty well. You are to present truly all such things as shall come to your knowledge, according to your understanding. \* \* \*

"Now, gentlemen, I shall endeavor to give you some idea of the origin of grand juries, or rather the causes which induced their institution, the nature of the testimony you are to receive, and what I apprehend to be the true rule or criterion which is to govern you in determining the sufficiency of proof to warrant you in finding a true bill, or in making a presentment. The causes which induced and rendered necessary the organization of grand juries were the frequent groundless charges which were preferred by evil persons against innocent and harmless men—thus harassing and burdening with great expense innocence and virtue, until the abuse became so intolerable that the whole people cried out for a remedy against the evil. Grand juries, then, being established as a check upon malice and calumny, prevented groundless prosecutions, shielded innocence and virtue and brought the criminal to justice.

"In the course of your deliberations you are to hear witnesses on the part of the prosecution only. This is obvious from the very constitution of the system of jury trials. It is said by high authority that the province of a *grand* jury is to ascertain the probability of an accusation and whether it is founded upon malice or not, and it is clearly the province of the *traverse* jury to ascertain the truth of such accusation. The testimony upon which your decisions are founded is entirely *ex parte*, and in no case can you hear witnesses produced by the accused.

"For a long period of time after the system of grand juries was adopted—even in enlightened England, from whom we have obtained some of our most salutary laws—witnesses were not heard on the part of the prisoner at the bar on his trial before the traverse panel. This rule obtained in the English courts until in the reign of Queen Mary, when a rather more liberal policy was adopted. She instructed her judges to hear witnesses upon the part of the accused when upon his trial; but even then they were heard without being sworn and qualified, and their testimony had but little weight when placed in the scales against the sworn witnesses upon the part of the crown. During the reign of Queen Anne, however, the equitable and rational rule which still obtains was established, and witnesses were allowed to be produced, sworn and examined upon the part of the defendant. But it is plain that if witnesses were to be heard upon the part of the accused before a grand jury, then a traverse jury would be unnecessary and the object of the grand jury itself would be defeated.

"You are to ascertain from the testimony before you—and that testimony is to be *ex parte*—and from the facts within your own knowledge, the probability of the truth of any charge which comes under your notice. This probability must be based upon sufficient ground; but in all cases where, from the evidence which you have heard, you believe the case sufficiently strong to put the court and traverse jury upon the inquiry, you will find your bill or make your presentment to the court. No consideration, however, should—and no motives, even of public safety, can—justify the needlessly and wrongfully harassing of an innocent individual; but, with careful investigation, this evil may be always avoided, and yet the criminal not be permitted to escape. It is not then the absolute truth of the charge with which you are to be satisfied, but the probable truth of such charge from the testimony before you.

"In forming your belief of the truth of those matters which come before you, you should exercise a proper discretion, grounded upon and restrained by your conscience and your duty. And as you believe so shall you in all cases report to this court. You are not, however, bound to declare every charge true merely because it has been sworn to, but you have the right to say, and it is for you to do so, whether, from the character of the witness and the circumstances under which he testifies, he is worthy of being believed.

"Where it is clearly evident that a crime or an offense has been committed, it will require less certainty of guilt to put the accused upon his trial than where both the reality of the offense and the identity of the criminal are doubtful. There are in almost every case facts and circumstances which are not susceptible of positive proof, and yet may be sufficiently convincing to the mind to warrant you in presenting the offense or in finding a true bill. You will be at all times upon your guard, lest you may allow yourselves unwittingly to be made the instruments of bad and evil men and be made the unwilling vehicle of wrong and oppression.

"This court, being exclusively federal in its jurisdiction, there is no statutory provision making it obligatory upon me to charge you in regard to any particular offense; yet there is one in which every member of the community feels so deep and painful an interest that I conceive it to be my duty to call your attention particularly to it. This is the offense of selling liquor to the Indians. I hope, however, that the time has gone by when there is or will be any necessity of using vigorous means to prevent this monstrous evil. I trust that at this day there is not to be found within the limits of our jurisdiction a man so lost to all the nobler feelings of nature and humanity as to violate a law which is manifestly so just and obviously so necessary to the safety of society as this law. The man who would, for the sake of a few shillings or a few paltry dollars at the most, and thus jeopardize the dwellings and the lives of his neighbors and friends, is far more criminal than the incendiary and sanguinary savage himself. It is he who places in his hand the torch which lights the victim's dwelling. It is he who sharpens the knife and uplifts the tomahawk which spill the blood of the defenseless women and children of the frontier. It is not the savage, but the contraband liquorseller, who does these wrongs. Examine this question carefully and if such a prodigy of inhumanity exists within our limits bring him to justice and let the severest penalties of an outraged law and a wronged community reach him. You must not countenance crimes of this enormity; you must give them your hearty disapproval; and the most proper and effectual way to do this is by following the rules which I have laid down to govern you. The Indians, if kept from our whisky, are as innocent and unoffending as the infant at the mother's breast; but when drunken their savage cruelty knows no limit.

"\* \* \* \* Now, gentlemen, I have addressed you at length upon the subject of courts and grand juries and their duties; not because I apprehended that the business of the term would render this course necessary, but that you might all properly appreciate the position which you occupy, as I presume many of you have never before heard the duties of this office discussed. This is information with which every American citizen and every man who has put himself under the protection of American laws should be familiar, and I am gratified at the attentive manner in which you have received it.

"I am gratified also at seeing a grand jury of such evident respectability and intelligence before me.\* It looks well for the country. It looks well for the observance and protection of good morals. And it is a guarantee to us that the laws of the land will be observed and respected, crime punished, and innocence shielded from the evil machinations generated and matured in the hearts of corrupt and vicious men.

"The influence which your action has upon the community which you represent is very powerful, either for good or evil. If you do your duties faithfully and fearlessly, the results will be to promote good morals and proper behavior. If you neglect or refuse to comply with that duty, your example will be followed and the evils to society would be incalculable."

The instructions of Judge Cooper to the Mendota grand jury was, for many years in the early period of the territory, considered highly authoritative. It was often quoted from and referred to by lawyers and judges as "Cooper's charge." Containing many sound precepts and principles, it was perhaps a model of its kind, notwithstanding the fact that it was delivered in a court which did no business and was addressed to a jury the majority of whose members did not comprehend or understand it and that did no business of any kind.

At the same time the judge delivered to the handful of lawyers present an address in reference to their position and duties, which was most learned and dignified, in keeping with his character and

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\*It is said that of the sixteen members of the jury only three could write their names and eleven of them could not understand the English language. Evidently it was well that Judge Cooper prepared his charge before he saw the make-up of the body to which it was delivered.

manners, and which was deemed worthy of publication and approval in the same paper with the learned young judge's charge to the grand jury. One portion of this address, characteristic of its author, was as follows:

"It will be my object to see those rules [of 'courtesy and gentlemanly bearing'] esteemed and respected, and painful indeed would it be to me to be under the necessity of punishing their willful infractions. It shall likewise be my object never to be harsh, petulant, or oppressive but to observe towards you a strict impartiality, a kind and courteous manner. This is due from the court, as well as from the bar.

"Coming to the bench, gentlemen, young as I am—the youngest superior judge in the union\*—and under the circumstances I do, I shall necessarily need much indulgence at your hands. The statutory provisions of the Territory of Wisconsin, until within a few weeks, I had never seen; and, such a mess of incongruous imperfections as they are, it cannot be expected that I am very familiar with them. The rules, likewise, of our courts here are entirely dissimilar to those under which I have practiced; but I shall endeavor to adopt for our governance a system as nearly like those to which you have been accustomed as practicable. That I shall frequently err, I doubt not; that is but human, and older, more experienced, and far more learned men than I am have often erred in the construction of laws. But whenever I do err, I shall not hesitate to retrace my steps, if possible, or to give to those who feel themselves aggrieved every facility in my power to have a hearing before a higher tribunal."

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\*Judge Cooper was then but 28 years of age.

## CHAPTER III.

### SLAVERY IN MINNESOTA.

In pre-territorial days in Minnesota as well as after the organization of the territory, there were several cases of slaveholding in the district. The officers of the garrison at Fort Snelling were the slaveholders and their personal servants were those held in bondage.

From 1835 to about 1840 the historical Dred Scott, who will always live in the annals of the country because of the famous decision still bearing his name, was the slave of Surgeon J. Emerson, the fort surgeon. During this period he married Eliza, the slave of Major Lawrence Taliaferro, the Indian agent at the post. When Dr. Emerson was assigned to Jefferson Barracks, near St. Louis, he purchased Dred's wife from her owner and took the couple with him. Later they passed into the ownership of Sanford, against whom Dred brought suit for his freedom.

It is said that the first slaves brought into Minnesota and held in servitude here were those of Col. Zachary Taylor, who was commander of the post about 1830, and subsequently a major general in the army, and president. In about 1838 an officer at the fort sold a slave boy to Hypolite Dupuis, who held him a few months, and then sold him back to another officer. Mr. Dupuis had therefore whatever of distinction attached to the first slaveholding resident of Minnesota.

When, in 1837, Rev. Alfred Brunson established his Christian mission at Kaposia (near St. Paul) he found himself unable to make much progress in converting the Sioux, owing to his ignorance of their language. At once he set about finding a man to act as interpreter who could speak both English and Sioux, and could devote his entire time to the work. The only man meeting all the requirements was

a young negro named James Thompson, black as ebony, but bright and intelligent—even if a bit unprincipled—who was owned by an officer of the Snelling garrison. The officer would not sell Jim for less than \$1,200. The negro spoke Sioux fluently and seemed very religiously inclined, and Reverend Brunson determined to purchase him and give him his freedom if he could secure the money. He wrote to some friends of abolition tendencies at Cincinnati, and the funds were soon raised and forwarded. Jim was purchased, his free papers made out and given him, and he was for a few months engaged in interpreting and explaining the gospel to the pagan Sioux of old Big Thunder's Kaposia band.\* But in a little while Jim fell from grace and from his position as interpreter. He became intemperate in the use of liquor, and corrupted instead of converting the Indians. He married a squaw and moved up the river opposite to Fort Snelling and opened a whisky shop, a blind pig. Time and again he was broken up and chased away by the military, and he gave the authorities so much trouble that it was a matter of general regret that he had been set free. The missionaries became disgusted with him, cast him completely away from them, and he was not well liked by either whites or reds. At last he removed to St. Paul, where he died in about 1878. Some of his mixed-blood descendants yet live about St. Paul and Minneapolis.

For many years after Minnesota became fairly well known and prior to the war of the rebellion, southern people, in considerable numbers, were wont to resort to the towns and other localities of the territory to spend the summer seasons. Numbers came from Mississippi, Alabama, Louisiana, Tennessee and Missouri nearly every season to pass the heated term in St. Paul and Minneapolis and the adjacent lakes and resorts. The trips were always made on the palatial steamboats of the day which came up the Mississippi, first to St. Louis and thence to St. Paul. Very many of the southern visitors brought their slave servants with them as valets, maids, nurses, etc., and as a rule their presence in a land where slavery was rigidly forbidden was

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\*Williams' Hist. St. Paul, p. 46.

not objected to, or even hardly noticed. The hotel keepers regarded the southerners as their best patrons, and did not protest against their servants, and the most of the people regarded the matter as none of their business.

But with the progress and development of the discussion over the slavery question during the decade from 1850 to 1860 abolitionists were made in Minnesota, and some of them were zealous and strenuous in their belief. The troubles in Kansas from 1854, the Dred Scott decision in 1858, and the John Brown raid on Harper's Ferry in 1859, stimulated them to stronger faith in their notions, and the presidential canvass of 1860 made some of them fairly fanatical.

In August, 1860, in the full tide of the political campaign, and when the Winslow house, in Minneapolis, was well filled with guests—many of them from the south, accompanied by their black bond-servants—a few of the radical anti-slavery men of the town determined to make "a demonstration for the cause of freedom," and inform the sojourning black people of their legal rights. The plan was originated and partially executed by W. D. Babbitt, Wm. S. King, and F. R. E. Cornell.

A slave woman about thirty years of age, named Eliza Winston, the widow of a free negro who had died in Liberia, had passed from her original owner, one McLemore, to a Mr. Gholson, of Memphis, Tennessee, who had "pawned" her (as she expressed it) to Col. R. Christmas for a loan. Eventually she became the property of Col. Christmas, who owned an extensive plantation in Mississippi, on which were a large number of slaves. She was made exclusively a house servant, a maid for her mistress and a nurse for a child, and her lot was not a hard one. She was much attached to her mistress, who was an invalid, and who had been brought to the cooling lakes and balmy and salubrious air of Minnesota to escape the heated term in the south. Her only discontent was that her husband had owned a house and lot in Memphis which upon his death, had she been free, would have descended to her in fee simple. But under the laws a slave could not own property per se in fee. His belongings were the property of his master. But somehow, perhaps under a particular law of Tennessee, Colonel Christ-

mas claimed the property in Memphis formerly owned by Eliza's husband and collected the rents, and this she did not like. She wanted the money herself.

When in August, 1860, the Christmas family, with Eliza, had been sojourning in Minneapolis and in their summer cottage at Lake Harriet for some weeks, the bond-woman made complaint of her condition. She asked a negro barber's wife if there were not white men in the place who would assist her in securing her freedom. The barber's wife consulted a white woman, and very soon Babbitt, King and their associates were up in arms to "deliver their fellow creature from bondage." A writ of habeas corpus was sworn out about August 21st by Mr. Babbitt and issued by Judge Vanderburg, then of the Hennepin district court, and given to a deputy sheriff to serve upon Eliza at the Christmas summer home at Lake Harriet.

About twenty men made an ostentatious and ridiculous display of their zeal in the cause of freedom by arming themselves with shotguns and revolvers and riding with the deputy sheriff as a self-appointed posse when he went out to the lake to serve the warrant. At the time the only inmates of the Christmas cottage were the invalid Mrs. Christmas, her little child, and Eliza, Colonel Christmas being in Minneapolis. The other cottages in the neighborhood were similarly tenanted. It was impossible to offer any resistance to the authorities had such a thing ever been contemplated.

Colonel Christmas and his family had been warned that a movement was on foot to take his slave woman from him, but the only efforts he made to thwart it were to tell Eliza that the "abolitionists" were after her, and that when she saw some suspicious looking men coming toward the cottage she must go to a patch of brush near the house and secrete herself until they went away. Two or three times she had done this, and she was on her way to the thicket when the deputy sheriff and his formidable posse apprehended her.

The rescued woman was taken back to the town and into Judge Vanderburgh's court in great triumph. Mr. Cornell, who has been termed "the most brilliant lawyer that ever practiced at the Hennepin

county bar," appeared for the petitioners for the writ and the slave woman, and a lawyer named Freeman, from Mississippi, represented Colonel Christmas. There was a large and excited crowd in the court room, and it is said that the calmest man in the room was Colonel Christmas, "who," even King's radical and denunciatory *Atlas* newspaper said, "behaved like a perfect gentleman all through the proceedings."

Mr. Cornell, in behalf of the slave woman, was expected to make an effort of his life in arguing for her release, but he contented himself with reading the territorial statute that there should be no slavery in Minnesota. Mr. Freeman spoke for the restoration of the woman to her master, arguing that under the *Dred Scott* decision she was but temporarily in free territory and therefore not entitled to her absolute liberty. Judge Vanderburgh decided the case very readily. In a few sentences he informed Eliza that she was not a slave, but free to go where and with whom she pleased. It is to be regretted that the judge made no written record of his decision.

Much excitement prevailed among the bystanders when the decision was rendered. Colonel Christmas spoke to Eliza and asked her if she would not like to go back home and take care of her mistress until she got well, "and then you may go if you wish to," said the colonel. Eliza answered: "Yes, I'll go back, but not to-day; I'll come out to-morrow." The colonel said: "All right; come when you please—or don't come at all if you don't want to." He then handed her ten dollars, saying that if she wanted any more money she knew where she could always get it. He then bade her good-bye and walked nonchalantly away. A southern friend said: "Well, colonel, you have lost your nigger;" and the philosophic colonel replied: "Yes, I reckon so; but I have plenty more of them and it's all right."\*

The petitioners and their friends gathered around Eliza and escorted her to a carriage, in which she was driven to Mr. Babbitt's residence. Meanwhile Mr. King, the fiery apostle of freedom and editor of the

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\**St. Anthony Express*, Aug. 20, 1860.

abolition Atlas, paced the hall, brandishing a heavy cane and denouncing in violent terms all who aided or abetted in holding a slave in Minnesota.\*\*

A number of citizens, some republicans among them, opposed Mr. King and deprecated the entire proceedings. They argued that the woman Eliza was really in comfortable circumstances despite her bondage; that she would soon be free anyhow, and that the officious intermeddling of her rescuers had mainly resulted in stirring up the community, engendering bad feeling, and driving away and keeping out a large number of wealthy southern summer tourists who spent a great deal of money in the place, and good money at that. The hotel keepers who made a specialty of southern guests and by that craft made much of their wealth, were especially indignant at what had been done. People from the south would not come unless they could bring their negro servants with them, retain them while here, and then return home with them; and if the abolitionists of Minneapolis were allowed to seduce and induce the slaves to become subjects of writs of habeas corpus, which would result in their being set free, southern people would stay away.

After nightfall a number of men, mostly young men, repaired to the Babbitt residence and made a noisy demonstration, calling upon Mr. Babbitt to "turn the nigger loose," and taunting him and his family with being "nigger lovers," etc. Fearing that they would forcibly take Eliza away from Babbitt's, her rescuers removed her, late at night, to another refuge. The petitioners and their friends were unduly alarmed and excited. They were in no real danger of any sort, but that night, believing—or pretending to believe—that the Atlas printing office would be mobbed by the "pro-slaveryites," Colonel King and some of his friends, well armed, stood guard over it the entire night.

In a few days Eliza was sent to Canada, via Chicago and Detroit. Within two months she was back in Detroit, and had a letter sent to her white friends in Minneapolis, saying she wanted her free papers

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\*\*Atwater's Hist. of Minneapolis, Vol. I, p. 100.

made out and sent to her, together with money enough to take her back to Memphis, where, she said, she could get possession of her house and lot and work as a servant for \$15 per month. Her Minneapolis rescuers were disgusted at this letter and gave her up. What finally became of her cannot here be stated.

There were other slaves in Minneapolis at the time of Eliza Winston's deliverance, but they chose to remain with their masters, and her case is believed to be the only one of the kind in the history of Minnesota.

## CHAPTER IV

### THE MINNESOTA & NORTHWESTERN RAILROAD CASE

The first legal case in the territory which attracted public attention and was of real public importance was entitled "The United States vs. The Minnesota & Northwestern Railroad Company," but was commonly spoken of and referred to as the Northwestern Railroad Case. This exciting and memorable struggle extended over the year 1854 and a great part of 1855. It was tried not only in the courts, but before the bar of public opinion, was investigated by congress, was a prominent theme for newspaper discussion, and even the issue between political factions.

By an act approved March 4, 1854, the territorial legislature granted a charter to the Minnesota & Northwestern Railroad Company.\* The incorporators were Robert Schuyler and others, of New York City, Albany, Boston, Bangor, and Dubuque, and Franklin Steele, Charles W. Borup, Orange Walker, Alex. Wilkin, Gov. Willis A. Gorman, Alexander Ramsey, James Stinson, and J. Travis Rosser, of Minnesota. The capital stock of the company was \$10,000,000.

By the terms of the charter the company was authorized and empowered to "construct," etc., a railroad "from a point on the northwest shore of Lake Superior, in Minnesota territory north of the St. Louis river, opposite the entrance of the Left Hand river into Lake Superior, and near the mouth of the St. Louis river, Minnesota, on Lake Superior, by way of St. Anthony and St. Paul, Minnesota; and cross the Mississippi at St. Paul, to such point on the northern boundary line of the state of Iowa as the board of directors may designate,

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\*Chap. 47, Terr. Laws of 1854.

which point shall be selected with reference to the best route to the city of Dubuque."\* Anticipating a land grant from the general government, it was further provided that the location of the proposed line "shall conform in all respects to such route as may be designated in any act of congress granting lands for the construction of the said railroad."\*\*

The initial point on Lake Superior described as "north of the St. Louis river," etc., is now the site of Duluth, and the project of building the proposed railroad was a most important part of the origin and establishment of that city. Behind both enterprises were Henry M. Rice, Edmund Rice and other capitalists of the day who had interests in the locality described "north of the St. Louis river." The corporation too had influential members and friends in the east. Among other provisions, Section 8 of the charter contained the following:

"For the purpose of aiding the said company in the construction and maintaining the said railroad, it is further enacted that any lands that may be granted to the said territory to aid in the construction of the said railroad shall be and the same are hereby granted in fee simple, absolute, without any further act or deed; and the governor of this territory, or future State of Minnesota, is hereby authorized and directed, in the name and on behalf of said territory or state, after the said grant of land shall have been made by the United States to said territory, to execute and deliver to said company such further deed, or assurance of the transfer of said property, as said company may require to vest in them a perfect title to the same."†

January 17, 1854, nearly two months before the charter was granted, a bill was introduced in congress by Senator Shields, of Illinois (subsequently of Minnesota), for a grant of nearly a million acres of land in the territory in aid of the contemplated railroad. The title of this bill was singular and ought to have been suspicious: "An act to aid the Territory of Minnesota in the construction of a

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\*Sec. 7, *ibid*

\*\**Ibid*

†Sec. 8, *ibid*

railroad for postal, military, and other purposes." To the uninformed and unwary it seemed as if this was a railroad to be built by Minnesota mainly for the benefit of the general government, to enable it to carry the mails, transport soldiers and munitions of war, etc. Its value as a military route was so elaborated upon by the projectors that Secretary of War Jefferson Davis was induced to write a strong letter advocating its construction and recommending congress to make the land grant.\* It was duly reported to the senate by Senator Johnson, of Arkansas, chairman of the committee on public lands, and upon his representations and explanations passed that body without opposition February 7th. But when the bill came into the house its character and leading features had become known. Jones, of Tennessee, and others showed that a private company had planned to secure the land at the initial point of the proposed railroad, about the mouth of the St. Louis river on Lake Superior; that the contemplated route was circuitous, ending at Dubuque, Iowa, and connecting with the Illinois Central Railroad; that the land grant was enormous for the purpose, and in short that the entire scheme was without merit, if not fraudulent; and so, on March 10th, the house, by a decided majority, laid the bill on the table, despite the efforts of Delegate Henry M. Rice (said to be its author), Richardson, of Illinois, Henn, of Iowa, and others.

In June the bill for a grant of land, "to aid the Territory of Minnesota in the construction of a railroad," was again introduced in congress, this time in the house. It was reported with a favorable recommendation from the committee on public lands by Stevens, of Michigan, chairman of the committee, who explained that this was practically a substitute for the bill which had been killed March 10th, with all of the objectionable features of the former measure eliminated. The grant of land had been reduced from 1,000,000 to about 720,000 acres, to be selected within nine miles instead of fifteen of the line of road, and the southern terminus was changed so as to make it

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\*Congressional Globe, Vol. 28; Part I., p. 566.

practically impossible that the road should be merged with the Illinois Central. In the opinion of most of the members the change of greatest merit in the new bill was the section providing that none of the land granted should inure to the benefit of any railroad company already "constituted or organized" at the time of the passage of the act. This cut out from the benefits of the act the Minnesota & Northwestern Railroad Company, often called the "Schuyler corporation" which, by its suspicious action and palpable connection with the former bill, had alarmed the members and incited them to defeat it. Because the "Schuyler corporation" (so called from Robert Schuyler, of New York, the first charter member named) had been "constituted" by the territorial legislature when it chartered the Minnesota & Northwestern Railroad Company, March 4th. Up to this time that corporation had only been "constituted;" it had not been "organized" by the election of president and directors, etc.

Section 3 of the congressional act, as passed by the house, was as follows:

"SEC. 3. And be it further enacted, That the said lands hereby granted to the said territory shall be subject to the disposal of any future legislature thereof for the purpose aforesaid and no other; nor shall they inure to the benefit of any company heretofore constituted or organized."

The bill went to the senate and, practically without opposition, was passed by that body June 20th. It was signed by the president and became a law June 29th.

In July it was discovered that in the final passage of the bill a gross and criminal fraud had been perpetrated upon the senate. The word "or" in the phrase "constituted or organized," as heretofore quoted, had been changed to "and," so as to read "constituted *and* organized." This exempted the Minnesota & Northwestern—the "Schuyler corporation"—from the prohibitions of the bill in regard to acquiring land under the grant, since these prohibitions applied to companies *both* "constituted and organized," and the Minnesota & Northwestern was merely "constituted."

Another fraudulent change in the bill was made after it had passed the house and before it reached the senate. As it passed the house the act provided that certain restrictions and regulations might be made by "future" legislatures of Minnesota, which would bar the then legislature from acting thereon. Some time before the bill passed the senate the word "future" was erased. So that as it became a law by the signature of President Pierce the bill made the Minnesota & Northwestern Railroad Company the beneficiary of the big government land grant and allowed the territorial legislature of 1854 to protect it in its ownership.

At once there was a great sensation in Washington and in the principal parts of the country, as soon as the facts of the fraud were learned. A congressional investigating committee was soon appointed to make thorough examination of the matter and to send for persons and papers.\* A number of congressmen and others—including clerks of the house, professional lobbyists, and Geo. W. Billings, of New York, one of the incorporators of the Minnesota & Northwestern—testified before it.

The result was two reports, both of which characterized the outside proceedings in connection with the passage of the bill as grossly fraudulent. The minority report censured the chief clerk and other employes of the house, and alleged that the bill had not become a law, even by the signature of the president, for that as it had been changed in transitu it was not the bill which had passed the house. The majority report acquitted everybody of guilt or culpability in the fraud except Geo. W. Billings, concluded that the bill had become a law, and recommended its speedy repeal.

The facts established were that after the first land grant bill failed to pass the house and was ascertained to be beyond all resuscitation there, Delegate Henry M. Rice, of this territory, found himself in a most troublesome situation. He was expected to procure land grants from congress in aid of railroads and other internal improvements in

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\*The investigation was moved by E. B. Washburn, of Illinois, who made a full expose of the matter before the House.

Minnesota, and his first attempt had resulted disastrously. At his solicitation a delegation composed of H. H. Sibley, Governor Gorman, Franklin Steele, and J. Travis Rosser went on to Washington to help him out.

Upon their arrival at Washington the members of the delegation—a self-constituted body—were informed by Mr. Rice of the desperate condition of the territory's railroad affairs. The bill permitting the grant to go into the possession of the Minnesota & Northwestern had failed beyond the possibility of resurrection and future passage; and the failure had been caused by the unwillingness of the house of representatives to make a large grant of the public domain, either directly or indirectly, to a private corporation. It would be useless to prepare a new bill containing the same provisions.

But, by a canvass of the house, it was found that a bill making a grant absolutely to the territory, and subject to the disposal of a *future* legislature, and excluding from its benefits all railroads then constituted or organized, would stand a strong likelihood of passing. Such a bill was therefore drawn up by Mr. Sibley with the assistance and full concurrence of his colleagues. It was approved by Delegate Rice and all other friends of Minnesota in Washington. It was introduced and, as has been stated, speedily passed both houses of congress, and was signed by the president. Sibley, Gorman and Steele came home. Some two weeks later Mr. Rosser, still in Washington, received word from St. Paul that different versions of the bill had reached Minnesota, and he was requested to ascertain which version was correct. Investigating, he discovered the fraud and at once exposed it.

The investigating committee made it plain that Geo. W. Billings, the Wall street promoter of the bill in aid of the Minnesota & Northwestern, was the arch instigator of the scheme, but that Gen. H. L. Stevens, of Michigan, (chairman of the house public lands committee) was, by reason of his negligence, the unconscious instrument of its perpetration. General Stevens swore that he made the changes at the instigation of Billings,

but claimed they were made before the bill passed the house, or at least intended to be made. General Jones, senator from Iowa, swore that Billings tried to induce him, as chairman of the senate committee on enrolled bills, to make the change, but he refused. Billings swore he did not know who made the changes, etc.

The majority report recommended that the bill making the grant (H. R. No. 342) be repealed. The minority report said the bill had not been legally passed and there was no need of repealing it. This report was very severe on all the parties connected with the fraud, and recommended that, for his negligence in allowing the clerks to make the changes, Chief Clerk John W. Forney be removed from office. The report of the majority was adopted, and within a few days a repealing act had been passed by both houses of congress and signed by the president. A resolution to remove Chief Clerk Forney received 24 votes.

When all these facts and proceedings were made known in Minnesota there was intense feeling and even excitement. It was believed that the exposed fraud would prevent the territory from receiving a land grant for even a strictly legitimate and meritorious purpose; and without a large government subsidy no railroad or other great public improvement could be established in the territory for many years.

In 1850 the democratic party in the territory, then largely in the majority, was divided into two factions, called the Sibley faction and the Rice faction because of the names of the prominent leaders of the factions—Henry H. Sibley and Henry M. Rice, who for a considerable period had been the general agents or chief factors of rival fur companies, which then controlled the trade of the northwest, and practically all of the important business of Minnesota. Based upon commercial rivalry the spirit of factional hostility pervaded everything, and the war waged was implacable and unrelenting.

So in 1850, when General Sibley had been selected by a large majority of his party friends and of the people, irrespective of party, for delegate to congress, the Rice democrats brought out Col. A. M. Mitchell, the United States marshal, a whig, against him. Sibley

was elected, however, but only after a hard fight and after receiving the support of a number of whigs, Governor Ramsey among them. In 1852 there was a truce between the factions, and Henry M. Rice was elected delegate without opposition. The truce was but a hollow one, for the ill feeling continued to exist, manifesting itself on occasions.

One of these occasions was in the political canvass of 1854. The candidates represented the factions, and perhaps were so designed when they were selected. During the canvass the Minnesota & Northwestern matter came forward. The Rice faction included all of the friends of that project who were directly interested in that project except J. Travis Rosser and later Governor Gorman. The Minnesota Pioneer, which had that season come under the ownership and editorial control of Earle S. Goodrich, was the organ of the Sibley faction, denounced the Minnesota & Northwestern, made full publication of the congressional expose involved, and pointedly charged that Henry M. Rice, in his position as delegate, had been connected with the plot to defraud the government out of the land grant. The election came off October 10th, and the Sibley faction elected its candidates generally. The newspapers supporting the Rice faction had defended the Minnesota & Northwestern as an enterprise and project of value and merit, explained that the changes made in the congressional land grant bill—the striking out of the word “future” and the substitution of “and” for “nor”—were innocently made and harmless, etc.

Very soon after the election the legality of the congressional land grant to the Minnesota & Northwestern was tested in the courts. An action of trespass against the company in behalf of the United States was brought by John B. Brisbin, assistant to United States District Attorney John E. Warren, in the Goodhue county district court, which was in Judge Welch's district. The charge was that the railroad company had made forcible entry and trespass upon the United States lands in Goodhue county, had cut and carried away timber, etc.

The answer of the defendant company, by Rice, Hollinshead & Becker, its attorneys, admitted the commission of the acts alleged, but attempted to justify under the territorial act of its incorporation and under the act of congress of June 29, 1854, making the grant of land hitherto referred to, and stating that the land whereon it was alleged the trespass occurred was a portion of the land granted to the alleged trespassing company, which was therefore on its own ground and within its own right.

To this answer the government, by Attorney Brisbin, replied that the act making the land grant had been repealed by the subsequent act of August 4, 1854, before the trespasses were committed.

To this reply the defendant company demurred, assigning as a ground of demurrer that the act of August 4th, so far as it undertook to repeal the act of June 29th, was unconstitutional and void. The case was decided on the demurrer, which was sustained by Judge Welch. The government appealed to the territorial supreme court, which unanimously affirmed Judge Welch's decision.

The opinion was written by Judge Welch, and it and the case is reported in 1 Gilfillan, on page 103, under the title of United States vs. M. & N. W. R. R. Co. The main points of the decision were that the congressional land grant of June 29, 1854, vested in Minnesota territory a present estate in the lands granted, and that congress had no power to revoke the grant; further, that the terms of the railroad company's charter, providing that all such lands as might be granted by congress to the territory to aid in the construction of its railroad should immediately be and become the property of the company, "without any further act or deed," vested in the company the title acquired by the territory under the congressional act.

Judge Welch was an old-fashioned state's rights democrat, believing in a "strict construction" of the federal constitution, etc. In his opinion upon the character of the act of revocation, which he held to be wholly void, he could not refrain from reiterating and emphasizing certain opinions of the early fathers of his party. "The government of the United States is one of limited powers," said he. "It is only

sovereign in a qualified sense. Congress can do what the constitution authorizes it to do and no more. Certain powers undoubtedly arise by implication, but no power can be implied authorizing the legislative department to take a man's property without compensation and without due course of law. This power is not included in any general grant of legislative powers."

It was charged that the suit brought by the government against the company for the trespass was not begun or prosecuted in good faith; but that the action was the work of collusion and conspiracy between the United States attorneys and those of the railroad company in order to fix the title to the lands in the latter. It was alleged that the action was unauthorized and therefore, in effect, forbidden by the government, and that Assistant Attorney Brisbin, who conducted the government's case, willfully and purposely made untenable contentions in the presentation of the case so as, in pursuance of the conspiracy, to lose it. For his course in bringing the action without the permission, or even the knowledge, of the Washington authorities, District Attorney John Esais Warren was removed from office, his removal carrying with it that of his assistant, Hon. John B. Brisbin. The removal was made by the president, but the order came in a caustic letter from Attorney General Cushing, which was of course given prominent publication by the St. Paul Pioneer.

The judgment of the territorial supreme court was rendered November 9, (1854), and an appeal to the United States supreme court taken by the government. This appeal was docketed in Washington January 2, 1855, but the case was not heard and decided until in December following. When the case was brought up Attorney General Cushing, for the government, moved for its discontinuance, although he was appearing for the appellant. The ground he alleged for his motion was that there were "other questions than those appearing on the record," which he deemed material to be brought to the consideration of the court in deciding upon the face and effect of the acts of congress referred to in the pleadings, and unless those questions

were presented he was unwilling to submit the case to the final determination of the court. After argument by the attorney general for the government, and Messrs. Barbour and Johnson, of Virginia, for the railroad company, the appeal was allowed to be withdrawn. (See 18 Howard, 241.)

In 1856 Edmund Rice, a partisan of the Minnesota & Northwestern, and who had been one of its attorneys, brought suit in Dakota county against the company, alleging trespass upon certain lands of his in said county. The suit was really in behalf of his company to fix its title to the congressional land grant of 1854. The case was decided on demurrer by Judge Chatfield in favor of the plaintiff, but on the appeal of the railroad company this decision was reversed by the supreme court, although no opinion was filed. (See 1 Gilfillan, p. 358.)

The case of the Minnesota & Northwestern Railroad Company did not end with the year 1854. In his message to the territorial legislature of 1855 Governor Gorman took strong ground against the company's charter, urging its repeal, but the repeal failed. The matter was taken up in congress that winter and the house passed a resolution declaring the charter null and void; but February 27th the senate voted down the annulling resolution. The news of the action of the senate caused great rejoicing among the friends of the company in St. Paul, and Saturday night, March 24th, they made a great demonstration, during which many of the principal stores and residences were illuminated.\*

In response to Governor Gorman's recommendation the legislature not only refused to revoke the charter of the company, but passed an act amending it, making it stronger than before, or, as those opposed to the company claimed, rendering it "worse than ever." The governor vetoed the act, but the legislature promptly passed it over his veto, by the required two-thirds vote in each house, and

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\*Neill's History of Minn., p. 613.

so it became a law. Some of the members who had been elected as anti-Minnesota & Northwestern men, voted for the amendatory act and to pass it despite the executive veto, and were soundly denounced as traitors, etc.

Without a long and tedious detail of all the further incidents in the history of this case, it must suffice to say that finally, in December, 1861, the supreme court decided against the validity of the land grant to the railroad company, and the lands were restored to the government. This decision—in the case of "Rice vs. Railroad Company"—is reported in 1 Black, p. 358, et seq. The suit was brought by Edmund Rice, himself a member of the railroad company, purposely to test the law. He alleged that the railroad company had committed trespass by cutting timber on a certain tract of land in Dakota county (Sec. 15-114-19), and the company answered that the land whereon the timber was cut was its own land by virtue of the congressional land grant.

In its decision the supreme court did not discuss the question of fraud in procuring the passage of the land grant act through congress—changing certain words in the bill—nor was that question brought forward during the hearing. In brief, the court decided that, under the particular circumstances of this case, congress had a right to repeal the land grant, and therefore that the repealing act of August 24, 1854, was valid. The opinion, which was written by Mr. Justice Clifford, the learned old "strict construction" democrat of Maine, is very lengthy, but very interesting. The decision was not unanimous. Chief Justice Taney and Justices Grier and Swayne concurred with Judge Clifford; Justices Nelson and Wayne dissented, and Justice Catron did not sit. The attorneys in the supreme court were Mr. Noyes, of New York, and Mr. Barbour, of Iowa, for the railroad company, and Mr. Stevens, of Michigan, for the government.

The essence of the decision was that the lands granted to Minnesota territory to aid the railroad company were to be held by the territory merely as a trust, and did not vest a title in present, and

that congress could at any time repeal the act creating the trust. Incidentally, among other declarations, the court laid down the principle that whenever privileges are granted to a corporation and the grant comes under revision by the courts the grant is to be construed strictly against the corporation and in favor of the public, and nothing passes except what is given in clear and explicit terms.

## CHAPTER V.

### THE PRESIDENTIAL ELECTION OF 1856—THE CAPITAL REMOVAL.

The presidential election of 1856 was won by the democrats, and James Buchanan was elected president and John C. Breckinridge, of Kentucky, elected vice president. A little more than a month after he had taken the seat of the chief executive, or on April 23, 1857, President Buchanan appointed to succeed Judges Sherburne and Chatfield two eminent lawyers of the territory, Rensselaer R. Nelson and Charles E. Flandrau. Chief Justice Welch was appointed to succeed himself. Owing to the fact that in 1858 the territorial government of Minnesota was succeeded by that of the state, the new court had comparatively a brief existence, but was in existence long enough to demonstrate its wisdom, ability, and general high character.

Describing the territorial court as a whole, Judge Elliott, in his Green Bag articles, says:

"The record made by the territorial supreme court is eminently respectable and but few of its decisions have been in terms overruled. During its existence, from June 1, 1849, to May 24, 1858, there were filed among its records 161 decisions, all of which are reported in the first volume of the state reports. Naturally the greater number of these decisions are devoted to questions of pleading and practice and the various other proceedings common in a new country, where the courts are chiefly engaged with questions of a commercial character. The adjective, as distinguished from the substantive, principally engaged the attention of the court. The judicial machinery had to be put in running order and the members of the bar instructed in the arts of applying the science of the law. The administration of justice was in a chaotic condition, and many of the important questions had to be decided upon first impression and without a guiding precedent."

But Hon. Isaac Atwater, in writing of the territorial courts, is not so charitable as Judge Elliott in commenting upon them. Judge Atwater had personal experiences in these courts and Judge Elliott had not, and so it may be that the old time judge is better authority than his able, worthy, and kindly disposed successor. Judge Atwater says:

"At one term the writer had four cases in all of which his opponent was Mr. John W. North. Three of them were, to my mind, fairly doubtful cases, but one I felt perfectly sure, as the authorities were unanimous in favor of my client. In due time the three questionable cases were decided in my favor. Some time later the other was decided, and, to my astonishment, for my opponent. Meeting the chief justice shortly afterwards, I ventured to ask him the grounds of the decision, as no reasons for it were on file, and I also desired to know how the court had got around and disposed of the authorities I had cited. He had utterly forgotten the case, nor could I refresh his memory in regard to it. Finally he said: 'Well, perhaps a mistake might have been made, but, as Mr. North had lost every case that term, we thought we would give him one, as it did not seem to be of much importance anyway.' The answer, of course, had to be conclusive.

"Such cases were, of course, exceptional, and no one will infer that they furnish an index of the average administration of justice in the courts of those days. On the contrary, the different courts of the territory, according to my own experience and observation and supplemented by that of others, were of greater average ability than those of most western states in their territorial days."

Throughout the early or territorial days the pioneer lawyers of Minnesota, while pursuing their profession, endured discomforts and discouragements which amounted, in many instances, to privations. Legal business was neither large in volume nor profitable in character. The sums involved in controversies were always comparatively small and the cases themselves were few in number and generally unimportant and uninteresting in character. If the lawyers had not added the real estate business to their profession they could have hardly supported themselves; as it was, the most of them made but a poor living.

In a lecture before the Ramsey county bar in March, 1887, Judge Flandrau said:

"To give the younger members of the bar some idea of the difficulties attending the practice in early days, you must allow me to relate a few instances connected with my own experience. Mr. Brisbin called me down from Traverse des Sioux, where I was then residing, to Mendota, then the county seat of Goodhue county, to respond to a motion before Judge Chatfield. I paddled a canoe down the tortuous course of the Minnesota river for about 150 miles, attended to the business, sold the canoe for \$3, and walked back to my home, a distance, straight across the country, of ninety miles.

"On another occasion a large party of suitors, witnesses and myself started, in December, from Traverse des Sioux for the land office at Winona. There were no roads, and not more than two or three houses on the route, which, in a straight line, is about 150 miles. We started with a wagon and two horses, made about fifteen miles the first day, and camped. When morning came we found about fifteen inches of snow on the ground. We could not turn a wheel, so we cached the wagon, packed the horses with our baggage and blankets, drove them ahead of us and footed it to Winona. On the return we built a small sled at Stockton, some twenty miles on this side of Winona, sufficient to carry our "traps," and footed it home again—a distance, in all, of 300 miles through an uninhabited country, in mid-winter, and with a deep snow. I used to think that sort of thing was fun, but with the growth of railroads I have naturally changed my views on that as on many another point."

Hon. C. D. Gilfillan has often related that in early times, while he yet resided at Stillwater, he and other young lawyers generally walked from their homes to St. Paul and back again. This was done partly for the fun the boys would have en route, but mainly to save the \$1.50 fare charged by the stage company for carrying passengers between the two towns. Many a lawyer would, at certain times, have been glad of an opportunity to hire himself for the consideration of \$2 a day.

Among the last official acts of Governor Gorman, in 1857, was a call of the legislature to meet in special session at St. Paul, April 27th, to consider matters of vital importance to the territory and upon

which immediate action was required. One of the emergencies noted was the bad condition of the laws regulating the territorial courts, which condition needed reforming.

When the legislature convened it was greeted by the newly appointed governor, Hon. Samuel Medary, of Ohio. In his message to the legislature, referring to the reforms demanded in the judicial system, Governor Medary said:

"The present condition of the laws regulating the territorial courts seems to require partial revision. Under the organic act the legislature has from time to time provided for holding terms of the district courts in each of the organized counties. At the first session of the last congress, however, an act was passed depriving the district judges of the several territories of the power to hold courts at more than one place in each judicial district.

"In the opinion of the supreme judges, the laws heretofore enacted respecting the organization and jurisdiction of the district courts and the administration of justice therein were not applicable to the state of things created by the act of congress without further legislation. The judges, therefore, declined holding regular terms of the district court until the requisite provision should be made by the legislature. The ensuing session, being the last held by your body, terminated before maturing the necessary relief. Since your adjournment, however, it has been ascertained that congress, near the close of its last session, again authorized the judges of the supreme court in the Territory of Minnesota 'to hold court within their respective districts in the counties wherein, by the laws of said territory, courts have been, or may be, established, provided the expense thereof should be paid by such counties respectively.' This, doubtless, was intended to remove the present difficulty; but it does not entirely restore the courts to the condition existing prior to the interposition of congress.

"It is believed to be in your power fully to complete the remedy. Immediate provision should be made for defraying the expenses of the courts to be held in the several counties, as indicated by the act of congress. Such further measures as may be found necessary to provide the most expeditious and general administration of justice throughout the territory, I submit to the wisdom of the legislature to determine."

Responding to the governor's message the legislature of 1857, at its extra session, passed the necessary laws for the conduct of the courts. At this session a considerable number of new counties were established and others organized, while some were, by the same act, both established and organized. These new counties were:

Aiken (now Aitkin), with the county seat at Lankiagun City.

Anoka, with the county seat at Anoka.

Big Sioux (now in South Dakota), with the county seat at Medary.

Buchanan (now Pine), with the county seat at Fortuna.

Carlton, with the county seat at Twin Lakes.

Cottonwood, with no county seat provided.

Crow Wing, with the county seat at Crow Wing.

Jackson, with the county seat at Jackson.

Manomin (now the portion of Hennepin county east of the Mississippi, and only six miles north and south by two miles east and west), with the county seat at Manomin.

Martin, with the county seat at Fairmount.

Medary (now in South Dakota).

Mille Lac (now Mille Laes), with the county seat at Hanover.

Murray, with no county seat provided.

Nobles, with the county seat at Gretchtown.

Pipe Stone (now Pipestone), with no county seat provided.

Rock, with no county seat provided.

#### THE CAPITAL REMOVAL.

An incident in the territorial history of Minnesota which occurred during the year 1857, and which was of surpassing interest at the time and of permanent importance and influence upon the welfare of St. Paul, was the attempted removal of the capital and change in the seat of government. February 6th a bill was introduced into the legislative council, by Councilor Lowry, of St. Cloud, to remove the capital from St. Paul to St. Peter, Nicollet county. After six days of excited discussion the bill passed the council (by a vote of eight to seven) and

was sent to the house. It passed that body February 18th and was sent back to the senate to be enrolled preparatory to its being signed by the governor.

The bill was a carefully and well devised scheme of the proprietors of the town of St. Peter, who expected, of course, if it was enacted into a law, to reap large benefits by the sale of lots in the new capital, and in other ways. There were, it is true, many who really believed that the interests of the territory and the prospective state would be best served by the location of its capital city at a point more in the interior than St. Paul; but the speculators constituted the lobbyists and workers for the bill and were the real power behind it. Its enemies charged that a great deal of money was used as a corruption fund in aid of its passage.

In the council the chairman of the committee on enrolled bills was Hon. Joseph Rolette, of Pembina, a mercurial French-American, born at Prairie du Chien, Wisconsin, a strong friend of St. Paul, and very hostile to the removal of the capital. February 27th the original bill and its enrolled copy were given to Councilor Rolette to be compared and reported upon. On the assembling of the council February 28th Councilor Rolette was not in his seat, nor did he appear that day. Nor did he appear the next day. Nor for the ensuing four days.

The truth was that Rolette had absconded with the bill and this fact soon became apparent to everybody. Balcombe, of Winona, moved a resolution calling on Rolette to report forthwith, and if he failed to do so, that the next member of the committee be ordered to produce the bill, or if necessary to procure another enrolled copy, etc. Under a motion for the previous question a call of the council was ordered and Mr. Rolette reported absent. On Balcombe's motion that further proceedings under the call be dispensed with, there were ayes, 9; nays, 5. Two-thirds not voting for the motion, President Brislin declared the motion lost, notwithstanding Balcombe's eloquent protests that 9 was two-thirds of 14. The council was therefore unable to adjourn until Rolette should be produced, and the sergeant-

at-arms, John Lamb, of Ramsey, and certain of his assistants scoured the city and country for days in an unsuccessful search for him.

The wily abstractor of the bill, with the document safely in his possession, remained hidden in an upper room of the Fuller House hotel for five days and nights. His quarters were in the garret, accessible only by a ladder, but were comfortably fitted up, and contained not only a well filled larder, but a sideboard bountifully supplied. Certain parties in the secret visited him often, so that his self-imposed term of imprisonment was in effect a pleasant picnic season. Rolette died at Pembina several years ago. A fine pastel portrait of him, an excellent likeness, was presented to the Minnesota Historical Society by Judge Flandrau, and is among the most valued collections of that society.

Meanwhile the council was stuck in its chamber with the "call" pending. Another bill, or rather a copy of the original, was procured and enrolled, but President Brisbin, of the council, and Speaker Furber, of the house, refused to sign it in that shape. However, Governor Gorman approved it despite the numerous and earnest protests, although it was made to appear afterward that the paper he signed was not even a correct copy of the bill which passed the house. President Brisbin gave the following reasons for refusing to certify to this "copy:"

"First—It has not been transmitted to the council by any message from the house of representatives in any wise whatever, nor has it been received by the council.—Vide joint rules, No. 2.

"Second—It did not come to my hands from the secretary of the council, who is its only authorized custodian, if it belong to the council, nor from the committee on enrolled bills.—Vide revised statutes, Chap. 3, Sec. 11.

"Third—It was not enrolled under direction of the secretary of the council.—Vide rule 3 of the joint rules.

"Fourth—No such bill has been reported to the council by the committee on enrolled bills, nor in any wise.—Vide joint rules, No. 4.

"Fifth—I have no evidence which I regard as legitimate that any bill of the contents of the accompanying paper ever passed the council.

"Sixth—It appears from the certificate of the secretary of the council of date March 3, 1857, that the certificate endorsed upon this paper and purporting to have been made February 12, 1857, was never signed nor attested by the said secretary.

"Seventh—Since the certificate\* of the secretary of the council bearing date March 3, 1857, the paper has to my own personal knowledge been out of the hands of all officers of the council, and in the hands of two members of the body not connected with the committee on enrolled bills. (Signed) John B. Brisbin, President of the Council, March 4, 1857."

The legislature adjourned Saturday, March 7th. On that day a report was made to the council regarding the now notorious bill known to the records as Council File No. 62. This report was signed by the absconding Rolette and his associate, Hon. Wm. Freeborn (for whom Freeborn county was named), and was as follows:

"The committee on enrolled bills would respectfully report:

"That, owing to the absence of the chairman of this committee [and yet he signed the report] bill No. 62, C. F., being a bill for the removal of the seat of government of the Territory of Minnesota, introduced by Mr. Lowry on the 6th of February, 1857, has not been reported by this committee back to the council. Your committee would further state that the above named bill might have been reported back to the council at this time, but that—after examining the enrolled copy of said bill which was delivered to this committee, with the engrossed bill by the secretary of the council, in presence of the enrolling clerk of the council, and carefully comparing the same—we find numerous errors in the enrolled copy—some portions of the engrossed bill being left out of the enrolled copy, and matter being inserted in the enrolled copy which is not in the engrossed bill.

"Your committee cannot, therefore, report the said bill, No. 62, C. F., as correctly enrolled, but retain the same in our possession sub-

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\*Secretary Smith's certificate referred to was to the effect that "the within copy of a bill" was "a correct copy of a copy certified by me," and that the copy of his certificate on the back was a correct copy of his original certificate. Speaker Furber certified on the back of the paper that it had been enrolled "not from the original bill of the same title, but from what purports and is alleged to be a copy of such original bill.

ject to the order of the council. All of which is respectfully submitted. (Signed) Jos. Rolette, Wm. Freeborn, Com. on Enrolled Bills."

The St. Peter Land Company claimed that the act removing the capital had become a law. About the 1st of July (1857) A. F. Howes, president of the company, applied to Hon. R. R. Nelson, judge of the second district, for a writ of mandamus to compel Governor Medary and the other territorial officers to remove themselves and the seat of government to the little town on the Minnesota. The case was argued before Judge Nelson at St. Paul July 10th. Judge A. G. Chatfield was the counsel for the complainant, and Hon. Lafayette Emmett, United States district attorney, appeared for the territorial officers. According to the Pioneer and Democrat of July 11th, the arguments in the case were substantially these:

Mr. Emmett, in opening the case, said he was not disposed to take any technical advantage of the petition presented, which he might do and which would be fatal thereto. He was willing to allow the matter to go before the court on its merits, believing there could be no question as to the fate of the petition. Regarding the removal of the territorial officers to St. Peter, he held that it was necessary that the petition should set forth distinctly the law requiring their location and residence at the seat of government. The writ should be perfect and show the law compelling them to remove to St. Peter.

Mr. Emmett argued that the removal act had never been passed by the legislature, and that if it had passed the law would be void, as being contrary to the provisions of the organic act. In support of the first proposition he read numerous extracts from the journal of the council. As to the second, he claimed that the legislature, having exercised the right of locating the temporary seat of government at the time and in the manner specified by the organic act, exhausted the legislative power over the subject. The temporary seat of government, being a particular act of the first legislature, the power of changing that act could not be exercised by any subsequent assembly.

Judge Chatfield, in his argument for the relator, contended that the question resolved itself into two points: First, has the legislature power over the removal of the capital, and, second, if so has that power been correctly exercised? He contended that by the organic act the legislature had the power to change the *temporary* location of the government as often as it wished, previous to complying with the provisions of the organic act submitting the question of a *permanent* seat to a vote of the people. He did not contend that the removal of the capital to St. Peter was anything but a temporary removal. As to the question of the validity of the law on file, because it was not the original bill (which Rolette abstracted and held), Judge Chatfield said he did not think it necessary that it should be the original, if the copy was an exact one and contained all of the words—and no more—than were in the original. But if it was not an exact copy, the result would be different, and he would not attempt to uphold any act that was not exactly in words and figures as it had passed the two houses.

At the conclusion of the arguments the case was taken under advisement by Judge Nelson, who, on the 13th, announced his decision denying the writ of mandamus to the St. Peter company and saving the capital to St. Paul. The judge's decision, as reported in full in the Pioneer Democrat of July 14, 1857, was regarded as a very fair and able one, expounding the law in clear and equitable terms, and was as follows:

*"United States Ex Relator, A. F. Howes, against Samuel Medary, Governor; Robert A. Smith, Librarian; Julius Georgii, Auditor, and George W. Armstrong, Treasurer of the Territory of Minnesota.*

"An application for a mandamus has been made by the relator, Alfred F. Howes, and a petition presented to this court, of which the following is a copy. \* \* \* An order was made by the court for the defendants to show cause why a peremptory mandamus should not be granted as asked in said petition. (See order on file.) At the hearing of the case the facts were agreed upon by the counsel for

the relator and the counsel for the defendants, and two questions of law were presented for the consideration of the court, viz.:

"1. After the governor and legislative assembly had established the temporary seat of government at St. Paul, was there any authority to change and locate it at another place?

"2. If they, the governor and legislature, had the power to change the temporary seat of government, have they done so?

"Before examining the merits of the question presented it may be proper to say that we have doubts that a mandamus is a proper remedy in this case; but, as no objections have been made by the attorney general, we shall assume that the relator is entitled to the remedy by such writ, provided that he sustain his case.

"The organic act of our territory was passed by congress and approved March 3, 1849. By section 4 of said act the legislative authority of the territory was vested in the governor and the legislative assembly, consisting of a council and house of representatives. The legislative power extends 'to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act.' The 13th section provides: 'That the legislative assembly of the territory shall hold its first session at St. Paul, and at said first session the governor and legislative assembly shall locate and establish a temporary seat of government for said territory at such place as they may deem eligible, and, at such time as they shall see proper, prescribe by law the manner of locating the permanent seat of government of said territory by a vote of the people,' etc. At the first session of the legislature a general law was passed establishing the temporary seat of government at St. Paul, and at the second session an act was passed providing for commissioners to locate the particular place in St. Paul where the building should be erected and to superintend the erection of the same. The temporary seat of government has ever since remained at St. Paul.

"The territorial government acts under powers delegated by congress and is governed by the same laws that control other agents. It cannot, therefore, rightfully go beyond the authority which has been conferred upon it. The organic act authorizes the governor and legislative assembly to locate and establish both a temporary and permanent seat of government. They have acted upon that branch of the power in relation to a temporary seat of government and have exhausted their authority in regard to it. This is not a case where

a power has been partly executed and may be completed at another time. Here there has been a full and perfect exercise of power in the first instance. The whole thing authorized to be done has been done, and nothing further is necessary to be done by the legislative power upon that branch of the subject.

"It was urged by the counsel for the relator that the 13th section of the organic act in regard to the location of the temporary seat of government is mandatory, and was inserted by congress merely in order that there should be no failure of the organization of the territory; that the location of the public institutions was a subject connected with the internal regulations of the territory, and, consequently, a rightful subject of legis'ation and unrestricted; also, that the legislature could change the temporary seat of government from time to time, although it might be an abuse of power. We cannot subscribe to this position. A continuing power may exist when, from the very nature of the thing to be done, it can be inferred that the grantor of the power intended to permit the exercise of it, from time to time, or more than once. As, for instance, had a special provision been inserted in the organic act authorizing the legislative power, at a particular session, to levy taxes for the support of the government, there could be no doubt that such power could have been exercised more than once. But this is not a power of that description. There is nothing in the nature of the thing to be accomplished from which it can be fairly inferred that a repetition of the act was authorized. Besides, the terms upon which the power is given exclude any such inference. The power is to do a particular thing at a *specified time*. 'At said *first session*,' says the act, 'the governor and legislative assembly shall locate and establish the temporary seat of government.' There can certainly be no principle of interpretation which would construe an authority to do a single act at a particular time into a power to do the thing more than once. The fact that a particular time was prescribed for doing the act is conclusive evidence that congress intended the authority should be exhausted by the first exercise of power.

"Again, the sixth section of the organic act conferring 'legislative power' does not change this view of the subject. The authority given there is in general terms and must be construed with reference to other portions of the same statute. The doctrine that general words used

in one clause may be restricted or qualified by particular words used in another clause of the same statute is too familiar to be controverted. Applying this rule to the case in hand, we find that congress *especially* prescribed what might be done in regard to a particular subject of legislation—establishing a temporary seat of government—and, had the broadest terms been used in the general clause granting legislative power, the general words would be limited or qualified by the special provision for legislation concerning the temporary seat of government.

"It was urged that there was no restriction or limitation to the section conferring legislative power, in regard to the location of a temporary seat of government. We think there is. The general grant of legislative power is expressly limited and restricted. It extends only 'to subjects of legislation consistent with the constitution of the United States and the provisions of this act.' Any exercise of legislative power in relation to a temporary seat of government which is not authorized by the special provisions of section 13 on that subject is not 'consistent with \* \* \* the provisions of this act,' and is not embraced in the general powers of legislation.

"We now come to the second point made upon the argument; and, although it may be unnecessary for us to examine this part of the subject, we shall do so for the purpose of reaching a satisfactory conclusion as to what constitutes a legislative enactment, and to what extent a co-ordinate branch of the legislative power is to be governed in its action by the other branches.

"It is alleged in the petition of the relator that an act passed the legislative assembly entitled 'An Act for the Removal of the Seat of Government of the Territory of Minnesota. Approved by the Governor of Said Territory, on the 5th Day of March, 1857.' A bill having the form of a legislative enactment was introduced upon the argument, and the question presented whether this can be regarded as a law. That will depend upon the manner in which it is verified and authenticated.

"Neither the organic act nor the territorial statutes make any provision for verifying or authenticating a legislative enactment. We must, therefore, examine the joint rules of the council and house of representatives to govern us in this respect. They provide that after a bill shall have passed both houses, and been correctly enrolled, it

shall be signed by the presiding officers of the two houses before it is presented to the governor for his approval. The speaker of the house of representatives affixes his signature to *this* bill with a certificate that 'the foregoing [meaning the bill] is presented for my signature, as speaker of the house of representatives, as being enrolled, not from the original bill of the same title, but from what purports and is alleged to be a copy of such original bill.' The secretary of the council certifies that 'I have examined the within *copy* of a bill and certify it to be a *copy* of a *copy* certified by me.' He does not say, however, that the *original bill*, or a copy of it, or a copy of a copy, was ever before the council. The president of the council declined to sign the bill and gave his reasons—seven in number—in writing; and in one of them he says: 'I have no evidence which I regard legitimate that any bill of the contents of the accompanying ever passed the council.' And there is not a particle of *evidence* on the paper presented that any such bill, or any bill on the same subject, was ever passed by the council. The bill was approved by the governor, but he could not make a law without the assistance of others. He could have no jurisdiction to act upon that subject until both houses had passed the bill and *the proper official evidence* of that fact was before him. It was impossible for him to have such evidence, for it did not exist. There appears to be attached to the bill in the secretary's office a certificate of Messrs. Wales and Thompson, who state, in substance, that they were members of the enrolling committee of the two houses, and that a bill, in the language of the copy presented, did pass both houses. This certificate has no effect further than the expression of their own individual knowledge, and is no evidence of the action of the two houses. It would be extremely dangerous to say that the governor could act upon such representation, and give the force of statute law to everything bearing the form of legislative enactment.

"If a bill, while pending in the departments constituting the legislative power, has been inadvertently lost or abstracted from the office of the clerk of either house, it is entirely competent for the same legislature to originate another bill and carry it through the various stages of legislation. It could then be presented to the governor for his approval with the proper official evidence that it had passed the two houses.

"We are of the opinion, therefore, from the papers which have been introduced before us, that there has been no law passed by the legislative power of this territory removing the capital from St. Paul to St. Peter.

"The application for a mandamus is, therefore, refused.

"R. R. NELSON,

"Judge of the Second District."

## CHAPTER VI.

### WILLIAM MITCHELL.

BY JOHN E. STRYKER.

No name is more intimately associated with the development of law in the state of Minnesota than that of William Mitchell. No name suggests more pleasant recollections or inspires greater pride in the judiciary of the state. For twenty-six years, from 1874 to 1900, Judge Mitchell sat upon the Minnesota bench, and during that time no man contributed more to elucidate the principles which are the foundation of our jurisprudence. With true instinct as to what the law ought to be, with deep knowledge of its history and reason, with a firm grasp of the facts in the case before him, with love of justice as his ruling passion, with close and logical thought, he framed his decisions and clothed them in clear language, which was a demonstration of his conclusions.

The history of a strong man so intimately associated with a great department of government during the formative period of a commonwealth is alike interesting and instructive.

The father and mother of William Mitchell were natives of Scotland. At the time of his birth his father was a farmer, residing at Stamford, county of Welland, in Ontario, not far from Niagara Falls. The subject of this sketch was born on the 19th day of November, 1832. His elementary education was obtained at private schools in Canada, and in 1853 he graduated from Jefferson College at Cannonsburg, Pennsylvania. For the two years following he was a teacher in the academy at Morgantown, Virginia, where he studied law, and in 1857 was admitted to the Virginia bar. The same year he came to Minnesota and settled in Winona. The citizens of that town early learned to appreciate his worth and ability, and, as a consequence,

his practice rapidly grew; he was elected to the second legislature of Minnesota and was also county attorney for Winona county. During the years of his practice in Winona, Mr. Mitchell was successively in partnership with Eugene M. Wilson, Daniel S. Norton, afterwards United States senator, and Lieutenant Governor W. H. Yale. His first term as judge of the third judicial district of this state began in 1874, and he was re-elected in 1880. When the membership of the supreme bench was increased from three to five, Judge Mitchell was, in 1881, appointed by Governor Pillsbury as a member of that court. At the succeeding election, as the nominee of both political parties, he was chosen for that office; by the same non-partisan unanimity he was re-elected in 1886 and again in 1892.

Unfortunately for the state, at the election of 1898 judicial offices had been dragged into politics. Judge Mitchell was renominated by the democratic party and also received three hundred votes in the republican convention, but failed to secure the nomination of the latter party, and at the election which followed, Minnesota lost its greatest judge.

As a young man William Mitchell was a republican, but becoming dissatisfied with the reconstruction measures of that party he joined the democrats, and, while never a radical, continued to affiliate with them until his death.

Physically Judge Mitchell was tall and slight, with a thin, clear-cut face illuminated and distinguished by deep-set, dark eyes. In manner he was kind, gentle and unassuming but always dignified. His charity and courtesy were unflinching, his hand ever ready to succor the weak or encourage those who were striving to rise. These traits were noticeable not only in his private life but also in his relations to attorneys, particularly the inexperienced, practicing in his court.

Judge Mitchell was twice married, first to Jane Hanway, at Morgantown, Virginia, in September, 1857. She died in 1867, and in 1872, he married Mrs. Frances M. Smith, of Chicago, a daughter of Jacob D. Merritt, of Dubuque. Four children survive, Mrs. J. K. Ewing, Jr., of Uniontown, Pennsylvania; Mrs. Frank A. Hancock, of St. Paul;

Mrs. H. L. Staples, of Minneapolis, and William D. Mitchell, of St. Paul, an able young attorney in active practice as a member of the firm of How, Taylor & Mitchell.

Perhaps the most characteristic quality of Judge Mitchell's mind was his power to illuminate the subject under consideration. In his opinions neither the ultimate facts nor the legal premises and conclusions were ever left in doubt. He saw, and, unlike many other prominent judges, he was able to make others see and understand the turning and distinguishing points in the case before him.

To consider the judicial opinions of Judge Mitchell in such manner as to do justice to his reputation is difficult because his fame does not rest upon one group or class of cases.

Epoch-making cases like those which have frequently engaged the attention of the federal supreme court are rarely brought before a state court, and it is the uniform high standard of Judge Mitchell's opinions in clearness, logic and learning rather than any supremely great decisions which made him eminent; therefore, to select particular opinions for comment is perplexing and may be of little value. Yet, his public life was that of the judge, and certain traits of his character are so plainly stamped upon some of his decisions that they will be mentioned, though others more notable and quite as characteristic might be selected by another.

Judge Mitchell's first reported opinion is in the case of *State vs. Young*, 23 Minn. 551. At the time of this decision its author was still on the district bench, and he was honored by the governor of the state by being called upon to sit in the supreme court in place of one of its judges, disqualified by reason of being of counsel in the court below. The case turned upon a point concerning which the courts are still irreconcilable, viz.: the sufficiency of parol authority to fill a blank in an instrument under seal. It was said that the former distinction between sealed and unsealed instruments had, with changing conditions, become arbitrary and meaningless. By holding that the penal sum might be inserted in a bond after its execution by the sureties, Judge Mitchell made this, his first reported case, a leading one,

often cited by the more progressive courts which follow precedents only so long as reason for them remains.

A characteristic unusual in so great a judge was entire absence of egoism and pride of opinion. When convinced that he had reached an erroneous conclusion he never hesitated to reverse himself. An early instance of this refreshing reasonableness is found in the dissenting opinion in *Parke vs. Hush*, 29 Minn. 434, where Judge Mitchell refused to concur with his brethren in sustaining a previous decision written by himself, in *Pamperin v. Scanlan*, 28 Minn. 345. And the same unprejudiced fairness was peculiar to his work until the end of his career.

The constitutional decisions of Judge Mitchell are marked by a just appreciation of the independent duties and powers of the several departments of the government.

The case of *Rippe v. Becker*, 56 Minn. 100, involved the constitutionality of an act to provide for the erection of a state elevator, and the law was held unconstitutional because not within the police power of the state but in violation of the constitutional provision, prohibiting the state from contracting any debt for works of internal improvement and from being a party in carrying on such works.

The conservatism of the judge, as well as the democracy and modesty of the man, is made apparent by the closing paragraphs of the opinion in that case, which are as follows:

"The time was when the policy was to confine the functions of government to the limits strictly necessary to secure the enjoyment of life, liberty and property. The old Jeffersonian maxim was that the country is governed the best that is governed the least. At present, the tendency is all the other way, and towards socialism and paternalism in government. This tendency is, perhaps, to some extent, natural, as well as inevitable, as population becomes more dense, and society older and more complex in its relations. The wisdom of such a policy is not for the courts. The people are supreme, and, if they wish to adopt such a change in the theory of government, it is their right to do so. But in order to do it they must amend the con-

stitution of the state. The present constitution was not framed on any such lines.

"It is always a delicate as well as an ungracious task to declare invalid an act of a co-ordinate branch of the government, and should never be done, except in cases free from reasonable doubt. But the legislature is not the people, any more than are the executive and judiciary. Like them, it is a branch—doubtless the most important one—of the government, and, equally with them, subject to the limitations imposed by the constitution; and, whenever it has clearly transcended those limitations, it is the duty of the judiciary to so declare. The act now under consideration seems to us so clearly in violation of the constitution that it is our bounden duty to so hold."

In *Lommen v. The Minneapolis Gaslight Co.*, 65 Minn. 196, the court sustained the constitutionality of the then existing struck jury law, and in his opinion, distinguished by learning and vigor of statement, Judge Mitchell considered the limitations upon the history of the right to trial by jury. He held that questions of policy and expediency are wholly for the legislature, which is limited only by express provisions of the constitution, the courts not being at liberty to declare an act void merely because, in their judgment, it may be opposed to the spirit of the constitution.

The same reluctance to encroach upon the legislative and executive authority is shown in the opinion in *Moede v. The County of Stearns*, 43 Minn. 312, where it is said:

"There is no country in which the distinction between the functions of the three departments of government is more definitely marked out on paper than in the United States, and yet there is none in which the courts have assumed so often to review, in advance of actual litigation involving the question, the acts of co-ordinate branches of the government. It has become the fashion to invoke the courts by direct action, or through some remedial writ, to review almost every conceivable act, legislative, executive, or ministerial, of other departments; and courts have been so often inclined to amplify their jurisdiction in that respect that they have not unfrequently converted themselves into a sort of appellate and supervisory legislative or executive body. Such a practice is calculated to interfere with the proper exercise of the functions of executive and legislative officers or bodies; to obliterate

the distinction between the powers and duties of the different departments of government; and, above all, to bring the courts themselves into disrepute, and destroy popular respect for their decisions. It may be very convenient to have in advance a judicial determination upon the validity of a legislative or executive act. It would often be equally so in the case of acts of a legislature. But we think the courts will best subserve the purposes for which they are organized by confining themselves strictly to their own proper sphere of action, and not assuming to pass upon the purely legislative or executive acts of other officers or bodies until the question properly arises in actual litigation between parties. It is but fair to the learned district judge to state that this question does not appear to have been raised or called to his attention on the trial in the court below."

A line of decisions in which Judge Mitchell applied to the inland lakes of the state the common law principles relating to navigable waters and riparian rights he considered among his best contributions to the public weal. On this subject, perhaps, the most important case is *Lamprey v. State*, 52 Minn. 181, the opinion in which exemplifies the breadth of view and perspicuity of its author in brilliant fashion.

Many other noteworthy opinions might be selected from the more than fifteen hundred which Judge Mitchell contributed to fifty-two volumes of Minnesota reports, commencing with *Fenno v. Chapin*, 27 Minn., 519, and ending with *State ex rel. Zaske v. Matter*, 78 Minn. 377, but space will not permit. In number of opinions this represents a greater amount of judicial labor than has ever been performed by any judge of the Minnesota or federal supreme court, and when the painstaking care, learning and conclusive logic of the work is considered, it constitutes an imposing monument more significant than any of marble or bronze.

The reputation of Judge Mitchell extended far beyond the limits of Minnesota. His opinions always received the most careful and respectful attention from courts and lawyers alike. The supreme court of Massachusetts (*Burney v. Children's Hospital*, 160 Mass. 57), cites *Larson v. Chase*, 47 Minn. 307, in which Judge Mitchell wrote the opinion, as a well-considered case and adopts his reasoning. The learned authors of *Sherman and Redfield on Negligence*, referring to a

question on which the courts of last resort of the country were not harmonious, say:

"The best statement of this rule, and the reasons for it, is in *Morse v. Minneapolis, etc., R. Co.*, 30 Minn. 465. The rule has been repeatedly enforced in New York, although never with a statement of reasons approaching to the clearness of Judge Mitchell's opinion in the Minnesota case."

During the political campaign of 1898 Professor Thayer, of the Harvard Law school, wrote to a friend in Minnesota as follows:

"I am astonished to hear that there is doubt of the re-election of Judge Mitchell to your supreme court. I wish the people of Minnesota knew the estimate that is put upon him in other parts of the country, and there could be no doubt about it then. I never saw him, and have no personal acquaintance with him. \* \* \* I have long recognized Judge Mitchell as one of the best judges in this country, and have come to know also the opinion held of him by lawyers competent to pass an opinion on such a question. There is no occasion for making an exception of the supreme court of the United States. On no court in the country to-day is there a judge who would not find his peer in Judge Mitchell. \* \* \* Pray do not allow your state to lose the services of such a man. To keep him on the bench is a service not merely to Minnesota, but to the whole country and to the law. Your state it is that is now on trial before the country. The question is: Can Minnesota appreciate such a man? Is it worthy to have him? I am not going to believe that a state which can command the services of one of the few judges in the country that stand out among their fellows as pre-eminent, that give it distinction, will refuse to accept these services. You lawyers of Minnesota must not let party politics work any such result."

On the 21st day of August, 1900, William Mitchell died beside one of Minnesota's crystal lakes, which he loved as he loved all nature in her pure and beautiful forms. His death came as a deep and personal sorrow to all his friends, and every right-minded person in the state was his friend. To his associates and those who practiced before him, the lasting and inspiring memory of the unselfish, sympathetic, loyal man will always remain blended with that of the great and upright judge.

## CHAPTER VII.

### TWENTY-TWO YEARS AT THE OLD COURT HOUSE (1859-1881).

ADDRESS BY JUDGE VANDERBURGH AT THE CEREMONIES ATTENDING THE  
OPENING OF THE NEW COURT HOUSE AT MINNEAPOLIS, NOVEMBER 11, 1885.

In the transaction of public business in one department or another, the people of the whole country, to a greater or less extent, frequent the court house from year to year, so that in process of time its courts, offices, its halls and very walls become familiar to all the people. And after it has stood a generation it seems almost as sacred as the old homestead where one has been born and reared. It is closely associated with the history of the county and state, and with events most important to the welfare of all the citizens and contains the records and memorials which affect all their interests and therefore is a central object of interest to all.

So brief a reference to the history of the court as is permitted here can for the most part be only general. If we attempt to descend to details to any great extent it will be difficult to know where to begin or where to stop.

A word in respect to the old fourth judicial district. Under the state organization it contained fifteen counties to the north and north-west, a vast territory; terms of court were then appointed in eight counties (two in each) and three in Hennepin county, November, January and May. Anoka county was added in 1860 and McLeod in 1866. New counties were organized and terms of court were afterwards appointed for Sherburne, Kandiyohi, Mononghella, Isanti and Mille Laes counties, so that the judge of the fourth district at one time or another held court in fourteen different counties with a mileage of travel with horse and buggy each year of 1,500 to 2,000 miles.

As population increased and extended new districts were from time to time organized. We lost the St. Cloud district in 1866, including counties north of Anoka and Wright and west of Stearns. We lost Carver and McLeod to the new eighth judicial district in 1870, and in 1875 Meeker, Kandiyohi and territory went to the new twelfth district. The St. Cloud district has since been made into three new districts. Since 1875 the fourth judicial has remained the same with four counties, Hennepin, Wright, Isanti and Anoka.

James Hall, of Little Falls, was elected judge in 1857 under the new constitution. The state was not admitted to the Union until May, 1858; he never held any general terms, and resigned September, 1858, and E. O. Hamlin, of Sauk Rapids, was appointed by Governor Sibley to fill the vacancy. He held the November term here for 1858, also January and May terms, 1859. The November term of 1858 opened with a crowded calendar, some 237 civil cases. At the bar we recall the names of many of the most prominent attorneys of the state: Cornell, Lawrence & Loehren, Atwater, Beebe, Nourse & Winthrop, Brisbin & Bigelow, Sanborn & French, Hollingshead, Gorman & Peckham, Lorenzo Allis, James Smith, Jr., Wilson & McNair, VanEtten & Officer and others. This term and the February term following lasted several weeks, with evening sessions most of the time. Judge Hamlin was an excellent presiding judge, and was much esteemed by the bar and public. He had been a student of Judge Woodward in Pennsylvania, and was well equipped for the position. James R. Lawrence, Jr., was the prosecuting attorney, under whom there were also the various county attorneys. He had no successors and the office was abolished.

At the April term, 1859, in Wright county, Judge Hamlin presided at the trial of the case of State vs. Jackson, an indictment for murder in the first degree. The circumstances of the homicide greatly exasperated the citizens of the neighborhood, and they did not acquiesce in the verdict of acquittal, and when he afterwards returned to the vicinity of the homicide, upon some further provocation he was taken by a committee of citizens and summarily lynched.

To aid in arresting parties who were suspected of being connected with the matter and for whom warrants were subsequently issued, Governor Sibley sent a company of militia up to that county, but their efforts were abortive and no one was arrested or ever successfully prosecuted. This was what was known as the Wright county war of 1859.

Judge Hamlin resumed his law practice in St. Cloud and afterwards, on account of ill health, removed back east and has since died there. He was the democratic candidate for governor in 1861 and for chief justice of the supreme court in 1864. His successor held the November term, 1859. The calendar continued very large, 327 civil cases, while the population then was not large, about 4,000 in the city and something more in the county; there had been a rapid growth and active era of speculation, a large lumber business and many collections. A. C. Morrill was the county attorney and H. A. Partridge clerk. The list of twenty-three grand jurors and thirty-six petit jurors was composed of a superior and substantial class of citizens. There was not much to vary the ordinary routine of trials at circuit which would be interesting to notice. One of the most important and exciting more public interest than any other for this term was a prosecution, civil and criminal, for the malicious poisoning of a horse. The state and prosecuting witnesses were represented by James R. Lawrence, who was an able advocate and trial lawyer, and the defense by Secomb and W. H. Peckham, now of New York. The principal question was the vexed one of identification. The defendant, however, succeeded in establishing an alibi to the satisfaction of the jury.

In another criminal case, when called, it was found that the most material witness had left the county, thereupon Morrill, having discovered that it was through the agency of the defendant, prosecuted and secured the conviction of the defendant in proceedings for contempt in interfering with the course of justice, and his punishment was quite as much as it would have been had he been convicted in the principal case. The effect of this was in those days especially salutary.

This city and vicinity were for several years, immediately preceding the war, a summer resort for southern people, chiefly in the Mississippi valley, as it was easily accessible by steamboats to them. They were accustomed to bring their colored servants with them. In August, 1860, prior to Lincoln's election, this court was unexpectedly applied to to issue a writ for the production of a slave woman, alleged to have been voluntarily brought here by her master, Colonel Christmas, of Louisiana, and restrained of her liberty contrary to the constitution and laws of Minnesota. The issuance of this writ caused great excitement and interest in the community. Upon the return of the writ a great crowd gathered at the court house. The master and his counsel appeared and the hearing was had. Cornell appeared for petitioner, when the respondent and his counsel, who was an attorney from Jackson, Mississippi, discovered that it was to be a quiet and orderly judicial inquiry, in which they were to be heard and treated fairly, they appeared quite satisfied, and after they found that the petitioner wanted her freedom, acquiesced in the result. They found no fault with the interpretation of the law, and were only aggrieved at the parties inciting the complaint. The remarks said to have been made by Colonel Christmas, who was a gentleman of high character, that he always respected the laws of the state he was in, was creditable to him and was in the line of his own convictions with reference to state jurisdiction.

During the war, especially the earlier part of it, the business of the court of this county fell off largely, so that at the November term, 1861, the civil calendar ran down to 60 cases.

After the war it increased rapidly until 1872, when the court of common pleas was established, which was afterwards, in 1877, merged into the district court. It was the popular will to increase the number of district judges rather than multiply courts. Judge Young was the first and only judge of that court, and afterwards was continued as district judge. He was a laborious man and faithful coadjutor and an able and upright judge. To the credit of the county, the criminal business was not in those days relatively large. In May, 1869, in the course of the construction of the great tunnel from Hennepin to Nicollet

island under the intervening channel, a break occurred, causing an eruption of the water of the river, which undermined and destroyed a number of buildings and factories on Hennepin island and endangered the falls and water power to such an extent that it took years of experiment and effort to secure the same from danger. This gave rise to much litigation, involving new and interesting questions, culminating in the important case of the St. Anthony Water Power Co. vs. Eastman, involving a trial of twenty days, which was the longest in the annals of the court at that time. The facts appear in 20 Minnesota Reports, 283. The investigation was conducted with great ability by Bigelow, Flandrau, Lochren and Gilfillan for the plaintiffs, and Cornell, the late Chief Justice Gilfillan and Secomb for defendants. The facts elucidated at the trial, which was most thorough, were of great value in ascertaining and in determining the final remedy for the protection of the water power.

Up to 1881 the litigation had been general in its character in law and equity except in the matter of condemnation proceedings, the law of which had been quite well settled. The great branches of business which at present occupy the courts, corporation and personal injury cases, and state insolvency proceedings, had not then developed large proportions. The law applicable to these subjects has in a large measure been built up since 1881.

The early settlers of this county were a remarkably fine class of men, intelligent, law abiding and industrious, and liberty loving, plain, thrifty people, strongly attached to the constitution of this country. The class of men constituting the juries were never surpassed in qualifications for that duty in any commonwealth, and the results of the jury trials in that time to which my remarks are limited were abundantly satisfactory on the whole and creditable to the jury system. Fidelity and intelligent capacity also characterized the official discharge of public duty by the officers of the court.

The district court is the great court of the people, and the most important considering its extensive jurisdiction and the multitude and importance of cases brought before it and the large discretionary power





Chas. E. ...

necessarily reposed in the judge. Their decisions and rulings in the great majority of questions are practically, if not necessarily, final. There is no more important or responsible position in the state than that of district judge. He ought to be a man of the highest personal character for integrity and morality, of calm judicial temperament, a good listener, yet reasonably prompt and of great industry and thorough impartiality. It is fortunate for this state that thus far its judges have generally ranked high, both in respect to character and qualifications.

During the period of which I have cognizance the following acted as county attorneys: A. C. Morrill, W. W. McNair, J. B. Gilfillan, George R. Robinson, D. A. Secombe, J. W. Leman, and W. E. Hale. Gilfillan and Hale served several terms each, and all rendered valuable service.

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#### CHARLES EDWIN VANDEBURGH.

Charles Edwin Vanderburgh, better known as "Judge Vanderburgh," was born at Clifton Park, Saratoga county, New York, December 2, 1829. The family came from Amsterdam, Holland, and settled in Dutchess county, New York, more than a generation before the French and Indian war. His grandfather was a soldier in the revolution, and at the close of the war removed to Saratoga county, New York, and his son Stephen, born in 1800, was married to Maria Calkins, and to them was born the subject of this sketch.

At the age of seven young Vanderburgh went with his parents to Marcellus, Onondaga county, New York, where he worked upon the farm in summer and attended district school in winter; this continued until he reached the age of seventeen. He taught two years, attended Courtland academy at Homer, New York, a portion of the time from 1846 to 1849, entered the sophomore class at Yale college in 1849, and graduated in 1852.

Following graduation he was principal of Oxford academy at Oxford, New York, one year, during which time he commenced the

study of law in the office of Henry R. Mygatt, Esq., one of the leading lawyers of that state; was admitted to the bar in January, 1855; remained in Mr. Mygatt's office until fall; went to Chicago and spent the winter; in April, 1856, went to Minnesota in search of a location; settled at Minneapolis; worked the first three weeks in the office of the register of deeds; entered a law partnership with F. R. E. Cornell.

On September 2, 1857, he married Julia Mygatt, daughter of William and Caroline Mygatt, of Oxford, New York. She died April 23, 1863, leaving a son, William Henry, born July 15, 1858, and a daughter, Julia M., born in 1861. The former graduated from Princeton college and Columbia law school, and after studying for a period in Bigelow & Flandrau's law office, was admitted to the bar; then spent a long period abroad, was co-executor of his father's estate, and is now in active practice in Minneapolis. The daughter was drowned in 1871 while her father was holding court in Meeker country; he married Miss Anna Culbert, daughter of the late John Culbert, of Fulton county, New York, April 15, 1873; to them was born one daughter, Isabella, who died, a young lady of promise, in 1893.

In 1859, at the age of twenty-nine years, the subject of this sketch was elected judge of the fourth judicial district, on the first republican ticket elected in Minnesota. He was the first resident of Minneapolis to obtain the office, and for over a dozen years he had sole jurisdiction in this territory, which embraced not only Minneapolis, but all the counties to the north and west. He served until 1881, when he was elected to the supreme court bench, from which he retired in 1894, the Cleveland democratic wave united with the populist having carried Judge Canty into his place. It will thus be seen that he did not leave the bench until twenty or thirty years after the judges who took their seats near the same time. The men who composed the bench of which he was a member are all passed away, viz.: Berry, Gilfillan, Mitchell and Dickenson. They were of exceptionally high character and of eminent legal attainments. During this period many new questions of great importance were settled by this court.

The results of Judge Vanderburgh's labors are found in Volumes 29 to 56, Minnesota Reports. His supreme court decisions were distinguished by strong common sense, thorough investigation and conciseness. After traveling one season in Europe, he then settled down in private practice and care of his estate until his death, March 3, 1898, survived by his second wife and son.

At the time of Judge Vanderburgh's death his private estate was valued at about four hundred thousand dollars. His will, after making ample allowance for his family, gave several special legacies to theological seminaries and colleges, and the residue of his property, amounting to two hundred thousand dollars, to the following societies: The American Bible Society, Board of Foreign Missions of the Presbyterian Church in the United States of America; Board of Home Missions of the Presbyterian Church in the United States of America; Board of Missions for Freedmen of the Presbyterian Church in the United States of America; and Presbyterian Board of Relief for Disabled Ministers and the Widows and Orphans of Deceased Ministers. He was a staunch Presbyterian, interested especially in theological seminaries and missionary societies, all of which he liberally supported during his life. He was a member of the first board of trustees of the Plymouth church in 1856; in 1859 he was elected vice president of the first meeting of the Athenaeum Library Society; in 1866 he was made first vice president of the Y. M. C. A. at its organization. He was very active in Sunday school work in the Westminster Presbyterian church in early days, and later on in the First Presbyterian church, besides having been elder in both churches; and he built up the Franklin Avenue Presbyterian church, which has been named after him as a memorial of his twenty-five years' service in building the church up. He also held official positions in several educational institutions.

He was the first president of the Minneapolis Gas company, a member of the first board of directors of the Security Bank of Minnesota, and was also a member of the board of the American Exchange Bank of Duluth.

In the early days, foreseeing the future of Minneapolis, he made large acquisitions of Minneapolis property, and for over forty years his property has been a strong feature in many parts of the city.

In politics he had been a republican, and was not very active until the unusual campaign of 1896, in which he took a prominent part on the side of Bryan and Lind, but refused to run for office.

Elsewhere in this chapter will be found the address of Judge Vanderburgh, giving the history of the fourth judicial district, 1859 to 1881, entitled "Twenty-two Years at the Old Court House."

It is impossible to estimate the influence which the private and official life of Judge Vanderburgh had upon this young and growing community, destined as it was to grow from four thousand to nearly half a million within half a century, seven-tenths of which time he would sit upon the bench. Vast interests were often brought in question; then the district had one of the greatest water powers, the greatest milling district, the greatest lumber manufacturing point, and the greatest wheat district in the world. It was a rare opportunity for judicial influence. His clearly defined knowledge of right and wrong naturally led him to search first for justice, and then the law to support it. This characteristic led him to develop peculiarly the side of equity jurisprudence in the particular district, and also upon the supreme bench of the state.

On March 4, 1898, the day following his death, the Minneapolis Times said of him:

"Soon after his arrival Mr. Vanderburgh formed a partnership with the late F. R. Cornell, afterwards justice of the supreme court. The firm took a prominent place from the first moment of its organization. In 1859 Mr. Vanderburgh was elected judge of the fourth judicial district, of which Hennepin county constituted a part, and was the first resident of Minneapolis to occupy such a place. Successively re-elected, Judge Vanderburgh dispensed justice in the district for over twenty years, driving over a large part of the circuit. In a day when the jurisprudence of Minnesota was but slightly developed, his excellent training and sound judgment blazed out the path of interpretation, which other courts followed. In 1881 he was elected to the bench of



C. E. VANDERBURGH.

Associate Justice Supreme Court, 1882-1894.



LOREN W. COLLINS.

Associate Justice Supreme Court, 1887-1904



DANIEL BUCK.

Associate Justice Supreme Court, 1894-1900.



THOMAS CANTY.

Associate Justice Supreme Court, 1894-1900.



the supreme court, to fill the place made vacant by the death of Justice Cornell. He was re-elected and held the office until 1894, the elections of 1892 having carried two democrats onto the supreme bench. Judge Vanderburgh's whole judicial career of thirty-five years was marked with untiring industry, spotless integrity, good judgment and profound understanding of the law."

On the same day the Minneapolis Tribune said of him, editorially:

"Judge Vanderburgh was one of the first lawyers who rose to prominence in the young city of Minneapolis, and the first to attain a seat on the district bench. That honorable place he occupied many years—for a much longer term than that of any man who has succeeded him. The judicial district, although larger in area, was then smaller in population and business, and Judge Vanderburgh was for an extended period the only occupant of the district bench here. Everything was new. The jurisprudence of the state had not been settled by a long record of precedent and supreme court decisions, and Judge Vanderburgh was obliged to make a good deal of original research and to exercise a great independence of thought in reaching his conclusions. It is therefore a high tribute to his legal ability and an evidence of the judicial temper of his mind to say that his decisions were rarely tainted with error. He was subsequently promoted to the supreme court, and it is not too high praise to say that he has left the impress of his mind upon our code of laws and court practice to quite as great an extent as any other man, living or dead. In all the relations of life, public and private, Judge Vanderburgh was an exemplary citizen. He goes down to the grave full of years and honors, leaving a tender memory in the hearts of all who knew him."

In the proceedings in memory of him at the capitol in St. Paul, January 9, 1899, the following old friends of his, prominent members of the bar, and justices, made addresses. The Hon. John B. Gilfillan, in his address to the court, said:

"He brought to his high office a thorough scholarship in the law, a love of right, and a studious and painstaking habit, that inspired and impelled him to a true and just solution of all matters coming before him for adjudication. What is the right of this matter was ever his guiding thought. He was kind and considerate to all, whether coun-

sel or litigant, court officer or plain citizen, and yet his love of truth and justice was so strong that anything which savored of deception or unfairness was sure to kindle his righteous indignation, and meet his merited rebuke. No one with a good cause ever feared to come into his court. If mistakes were made, as must needs be at times, the right of review was fully and fairly preserved in the record. His love of substantial justice, regardless of technicalities, made him a close student of the principles of equity, and, long before his elevation to this court, he had won fair fame as a jurist in equity cases."

Ex-Judge A. H. Young said:

"The record of the life of Judge Vanderburgh will bear the closest scrutiny, and will elicit naught but words of commendation and approval, for he was a noble man and a just judge. \* \* \* After six years of practice before him at the bar, I was called to be his associate in the work, and from thence came to know more of his personal worth and the controlling principles of his private and public life. He had then been upon the bench more than twelve years, and was in term of service the senior judge upon the district bench in the state. His long experience, his acquaintance with the practice, and his mature judgment gave him a high place in the esteem of the bar as a judicial officer. The memory of ten years of association with this distinguished and able jurist is very dear to me.

"The experience of those twenty-two years during which Judge Vanderburgh served upon the fourth judicial district can never be repeated and can only be recalled and understood by those who in service helped to make the history of those years."

Hon. Wm. E. Hale said:

"He did much to create in the minds of the masses of the people the greatest respect for the law and its administration. In those early days, when the history of the state was being formed, titles to land being settled, and new laws being made, which needed interpretation and application, the people needed just such a man to preside in their courts. \* \* \* No man was ever loved or respected more by the masses than was Judge Vanderburgh. And then for a long time hardly a county except Hennepin county possessed a court house, and he was often obliged to hold his court in some public

hall or the dining room of a hotel, but under whatever discouraging circumstances he administered justice always alike and equally to all. He was constantly progressing and kept abreast with the age in which he lived, so that, as the litigation increased, not only in amount, but in importance, he was always found to be equal to the occasion. \*

\* \* He came to the supreme court of the state ripe in experience and full of knowledge. He had grown up with the state, was familiar with its laws and knew the necessities and circumstances of their creation, and hence was well prepared to adopt and apply them in cases in this court."

Ex-Justice Daniel A. Dickinson, who had sat upon the supreme bench twelve years with Judge Vanderburgh, said:

"For more than a third of a century, a period exceeding a whole generation, Judge Vanderburgh was an honored justice in the court of general jurisdiction in this city and in this court of last resort. The fidelity and painstaking care with which he discharged judicial duties may be likened to that which a sculptor bestows in chiseling the face and form of a statue, anxious always that no fault or flaw should be revealed in the finished work.

"His strong, keen sense of natural justice led him to delight in the study and application of the principles of equity jurisprudence, and it was in this field of the broad domain of law that his learning and wise judgment were most conspicuous.

"But not alone do the opinions of this court which bear his name measure or indicate the extent of his labor and influence in its adjudications. As one of his associates on this bench, I desire to acknowledge the wise counsel and helpful assistance rendered by him to us who sat with him here. How far his learning, counsel, judgment may have influenced or shaped the decisions of the court, it is impossible to express or even estimate; but it may be said that they largely contributed, and lent an immeasurable influence, to the determination of all the thousands of causes adjudicated here during the twelve years of his service on this bench."

The Chief Justice, speaking for the court, said:

"His life was pure, his character sturdy; his perception of justice keen. He was an honest man; a generous and public spirited citizen,

an able and fair minded judge: who honorably and faithfully served the state for a generation."

At the bar the firm of Cornell & Vanderburgh was among the first in the state from its beginning. Both members afterwards reached the supreme court bench.

To the bare statement of facts of this unassuming character, little need be added. Few men, guided by rigid moral principles, have spent their lives on the unremunerative trial bench in pioneer communities and emerged with large fortunes; fewer have spent twenty-two consecutive years upon an elective trial bench, and then been twice elected to the highest state court; but fewer still are so tenaciously religious as to give much of their time and one-half of their fortunes to further the religious influences of this and foreign countries.

In the formative period of any community the business and public morals largely shape its institutions, and as they are first trained, they are likely to grow. While there are many citizens who depend upon principle rather than legal restraint for their general conduct, yet in the operation of business affairs and methods, the ultimate decision in doubtful cases is tested by the rule which can be enforced; and the court determines that rule. Those rules are tested by the law and equity, as the court understands them, and where there is little positive law for precedent, the trial court determines the justice between the parties by the application of those moral principles which it would apply to its own life. The same principles relatively apply to the supreme bench. This community (Minneapolis), was most fortunate in having the best years of such a character upon its bench.

## CHAPTER VIII.

### AFTER MINNESOTA BECAME A STATE.

February 23, 1857, the senate of the United States passed an act authorizing the people of the territory of Minnesota to form a constitution preparatory to their admission to the union of states. Before the close of that session of congress a bill passed granting certain lands to aid in the construction of railways in the territory.

Governor Gorman called a special meeting of the territorial legislature to adopt measures that would give efficiency to the acts of congress. The session convened April 27, 1857, and Samuel Medary, who had in the meantime been appointed governor to succeed W. A. Gorman, whose term had expired, transmitted a message of instruction to the legislature. An act was passed to execute the trust created by congress, the lands were ordered conveyed under certain conditions to railway companies already chartered, and the extra session of the territorial legislature adjourned May 23. The enabling act of congress called for an election of delegates to a constitutional convention, and that election was held the first Monday in June, 1857; and the delegates chosen met at St. Paul on the second Monday in July.

Party lines between republicans and democrats were sharply drawn and at once a contest for political supremacy was inaugurated.

The enabling act specified that the convention should meet on the second Monday in July, but it did not fix a definite hour. Therefore the republican members-elect proceeded to the designated capitol building just before midnight, and promptly at 12 a. m. Monday morning the secretary of the territory, Charles L. Chase, called the convention to order. Immediately a motion to adjourn was made, which was announced by the secretary, and the democratic members who

were present at once left the hall. The republican members remained and proceeded with the business specified in the enabling act.

In the meantime the democratic wing of the convention proceeded to organize a convention, and for nearly two months the two factions sat separately. In the meantime conservative men of both parties were doing their utmost to bring about agreement between the conventions, and on August 29 a conference committee was appointed which resulted in the adoption of precisely the same constitution by both meetings. The new constitution was finally submitted to the people and ratified by popular vote October 13, 1857.

The bill for the admission of Minnesota was brought up in the United States senate in the following January, but southern senators were successful in preventing its consideration until after Kansas had been admitted under its Lecompton constitution. It is claimed, historically, that the bill for the admission of Minnesota could not have been passed but for the fact that Kansas was believed to be permanently democratic.

Stephen A. Douglas submitted the bill for the admission of Minnesota January 29, 1858, and the contest over it constitutes one of the important debates of the United States senate. The opponents of the bill relied largely upon the claim that the constitutional convention was irregular and its separate action illegal. But the admission of Kansas was the necessary panacea, and on April 7 the bill passed the senate with only three dissenting votes. Later the house of representatives agreed to the bill by a vote of 158 to 38.

May 11, 1858, President Buchanan approved the act, and Minnesota became one of the United States.

At the election in the previous fall state officers had been chosen, and on May 24, 1858, they assumed their official duties. They were:

*Governor*—HENRY M. SIBLEY.

*Lieutenant Governor*—WILLIAM HOLCOMB.

*Secretary of State*—FRANCIS BASSEN.

*Treasurer*—GEORGE W. ARMSTRONG.

*Auditor*—W. F. DUNBAR.

*Attorney General*—CHARLES H. BERRY.

*Chief Justice, Supreme Court*—LAFAYETTE EMMETT.

*Associate Justices, Supreme Court*—CHARLES E. FLANDRAU, ISAAC ATWATER.

*Clerk of Supreme Court*—JACOB J. NOAH.

*Judges of District Court*—S. J. R. McMILLAN, first district; E. C. PALMER, second district; THOMAS WILSON, third district; JAMES HALL, fourth district; N. M. DONALDSON, fifth district; L. BRANSON, sixth district.

Thus the first lawyer in this region of the country became the first governor of Minnesota.

At the time of Minnesota's admission to the Union the commercial centers of the country, especially those of the eastern states, were suffering financial embarrassment, and the state's development was greatly hampered because of the monetary stringency which prevailed.

The system of courts provided by the new constitution included a supreme court, district courts, probate courts, justice courts and a further formation of courts by state legislative enactment. The constitution provided that only one judge of a district court might be elected in any one district. But in the districts which included Ramsey and Hennepin counties the business soon outgrew the capacity of a single judge. For a while the difficulty in Hennepin county was met by the formation of outside districts, but later courts of common pleas were organized in both Ramsey and Hennepin. This plan, however, proved inconvenient, for it provided two district courts with practically the same jurisdiction. These difficulties continued until 1875, when a constitutional amendment provided that the courts of common pleas should be merged in the district courts and more than one judge might be elected to the district bench.

During the first year of the state government eighty-nine lawyers were enrolled as members of the bar, and a majority of them achieved

distinction as citizens of the commonwealth. The state has always drawn freely from the legal profession for legislative material, and has supplied the national legislature with men of greatest distinction.

Since 1891 admission to the bar of Minnesota has been safeguarded by an enactment which compels regular examination of applicants by a board of state examiners; the board being compelled to hold at least three examinations each year. All persons desiring to practice law in this state are required to appear before the examining board, and the results of such examination are then submitted to the supreme court. An exception to the provisions of the statute is made in the case of graduates of the department of law of the University of Minnesota; graduation from that institution entitling the individual to practice upon receiving a diploma.

The value of technical education was recognized from the very beginning of the territorial government of Minnesota, as is evinced by the fact that the organic act of the territory contained an appropriation of \$5,000 for the establishment of a state library. The library was started in 1851 under the territorial government, and seven years later it was perpetuated under the state government. The judges of the supreme court have general oversight of the library and have the authority to order the purchase of books. While there are many volumes of a general character, the library is essentially a law library. It receives by exchange the reports of the supreme courts of the several states, and also state statutes and copies of miscellaneous law books. It is rapidly becoming one of the important libraries of the country. The librarians are appointed by the governor of the state.

Immediately upon its admission as a state Minnesota was constituted a judicial district of the United States with a district court having circuit court powers.

Rensselaer R. Nelson was appointed judge and occupied the bench for thirty-eight years until, reaching the advanced age of seventy, he retired.

George W. Prescott was appointed clerk of the court, was succeeded by James W. Taylor, he by William A. Spencer, who served until his death in 1897, when his son, Charles L. Spencer, became clerk and is still the incumbent of that position.

For many years the district of Minnesota was undivided and all the terms were held at St. Paul. In 1890, April 26, the district was divided into six divisions, and the court has since been held at St. Paul, Minneapolis, Winona, Mankato, Duluth and Fergus Falls.

Judge Lochren succeeded Judge Nelson.

In 1862 Minnesota was made a part of the eighth judicial circuit of the United States, the district court was deprived of its circuit powers, and Justice Samuel F. Miller held the first term of United States circuit court in October of that year. H. E. Mann was appointed clerk of the circuit court, and held the position many years. He was succeeded by Henry D. Lang, the present incumbent.

In March, 1892, Walter H. Sanborn, of St. Paul, was appointed a judge of the eighth judicial circuit court of appeals of the United States.

The personnel of the United States courts in Minnesota at this time is:

*United States Circuit and District Court Judge*—DAVID J. BREWER, associate justice United States supreme court, Washington, D. C.

*United States Circuit Judges*—HENRY C. CALDWELL, Little Rock, Arkansas; WALTER H. SANBORN, St. Paul, Minnesota; AMOS M. THAYER, St. Louis, Missouri; WILLIS VAN DEVANTER, Cheyenne, Wyoming.

*United States District Judges*—WILLIAM LOCHREN, Minneapolis, Minnesota; PAGE MORRIS, Duluth, Minnesota.

*United States District Attorney*—CHARLES C. HAUPT, Fergus Falls, Minnesota.

*Assistant United States District Attorneys*—ALBERT J. SMITH, Minneapolis, Minnesota; JOEL M. DICKEY, St. Paul, Minnesota.

*Clerk United States Circuit Court*—HENRY D. LANG, St. Paul, Minnesota.

*Clerk United States District Court*—CHARLES L. SPENCER, St. Paul, Minnesota.

*United States Marshal*—WILLIAM H. GRIMSHAW, Minneapolis, Minnesota.

*United States Commissioner Court of Claims*—PERCY D. GODFREY, St. Paul.

There are five masters in chancery, Ambrose Tighe and B. J. Shipman, St. Paul; E. K. Fairchild and Howard S. Abbott, Minneapolis, and A. L. Agatin, Duluth.

The referees in bankruptcy number nine, as follows: William Burns, Winona; Jean A. Flittie, Mankato; Elford S. Bassett, Faribault; M. Doran, Jr., St. Paul; Orlando C. Merriman, Minneapolis; Henry F. Greene, Duluth; Ernest W. Campbell, Litchfield; Ole J. Vaule, Crookston; William L. Parsons, Fergus Falls.

There are fifty-four United States commissioners in the state.

The United States district attorneys have been: Eugene M. Wilson, George A. Nourse, Henry L. Moss, Cushman K. Davis, William W. Billson, D. B. Searle, George N. Baxter, Eugene G. Hay, Edward Stringer and Charles C. Haupt.

It is difficult to determine whether, as the number of lawyers increases, relative average ability of the bar of a great state is maintained. When the famous names of the earlier territorial and state bar are brought to mind the concentration of their individual achievements seems greater than the most noteworthy of present opportunities; but it must be remembered that historical incident invariably surpasses in interest the work or action of the present. It is certainly the opinion of representative men of the Minnesota bar to-day that professional standards are not deteriorating but are advancing because of the demand for more thorough legal education, the awakening of public opinion regarding the purity of the bench and its being placed above the dictates of partisan policy. With reference to this matter the late Judge Flandrau, a giant in his profession in the early days, has said:

"I am proud to be able to say that although the bar (of Minnesota) has been augmented vastly in numbers since our admission into the Union, my observation leads me to the conclusion that if any change has occurred in its ethical development, it has been on the side of improvement, rather than deterioration; and, so far as its intellectual and professional growth is concerned, it has produced, and now embraces, within its membership some whose fame extends throughout the national domain."

The development and prosperity of Minnesota has been almost unequalled in the history of the states of the Union. This is remarkable when it is considered that its statehood began in the days of the most serious financial depression which the country had experienced up to that time, and that within less than three years from the time it became a participating commonwealth in national affairs it was called upon to engage in the greatest war of history, supplemented in disastrous consequences by what may be termed its individual war against the most important uprising of Indians that any part of the country had ever been called upon to suppress.

That the state should have progressed under such adverse conditions, so rapidly in every line of material welfare that it is now without a peer in way of relative advancement, is due to something more than fertile fields, natural resources and salubrious climate.

Without doubt the principal cause is to be attributed to the character of the people who have accomplished so much in so brief time, handicapped, as has been indicated, by circumstances unfavorable to easy accomplishment of results. And these people must have had leaders of more than ordinary ability whose mission was to direct public affairs to the end of greatest service to the state and its citizens.

In the aggregation of men who, from the earliest history of settlement, directed affairs and originated measures of advancement and development, it is a matter of history that almost every person of public recognition was a lawyer by education, and nearly all of them by practice; and this is not confined to the development of the courts,

but permeates every official position and the enterprises which have grown up along the lines of general business.

If it is permissible to name one individual who should take first rank among those to whom the present greatness of Minnesota is indebted, then must the name of the first lawyer who sought practice by hanging up his sign be given. And in naming Henry Hastings Sibley, the name also of the first governor of Minnesota is presented, and the first delegate that the territory of Minnesota had in the national congress. It is to be recalled, also, that when General Sibley began his residence in Mendota in 1834, that he was but twenty-two years old. He was the first and only magistrate of the region. And he, together with that eminent lawyer and jurist, Charles E. Flandrau, were most depended upon to subdue the Sioux outbreak of 1862. But before that Governor Sibley had, together with Gorman, Flandrau and men of their character, saved Minnesota from financial ruin and despoliation by those who sought to obtain means for all sorts of schemes by jeopardizing the credit of the state. And in later years this first lawyer of a vast wilderness was a factor in innumerable enterprises of merit which assisted in the rapid upbuilding of this great commonwealth.

In Alexander Ramsey, who for so many years was the very embodiment of Minnesota, we again credit the profession of law with an honored member. To his vigor of action the state owes its unrivalled honor of being the first commonwealth to offer men under the call for volunteers in the defense of the integrity of the United States. His ability and character made Minnesota, from the very first, a factor of more importance in the general government than were many sister states of much greater age, population and wealth.

The proclamation for volunteers was signed by Lieutenant Governor Donnelly (a lawyer), April 16, 1861, and on that day a young St. Paul lawyer, Alexander Wilkin, slapped the face of a regular army officer of nearly twice the size of Mr. Wilkin, because the officer expressed disloyalty to the government; and immediately upon the call for troops being issued, Alexander Wilkin began preparations for

the enrollment of a company, and four days from the date of the call he had a full company of one hundred men enlisted. In the regimental organization he was given A company, First Regiment, Minnesota Volunteer Infantry, and was its first captain; and thus a lawyer is entitled to the honor of having raised the first company, of the first regiment, of the state which first offered volunteers in defense of the Union. Colonel Wilkin (who had been promoted to the colonelcy of the Ninth Minnesota), was killed while commanding a brigade at Tupelo, Mississippi, July 14, 1864.

Naturally so important a matter as the organization of the first regiment which the state was to offer to the government called for the best attainable leadership of that regiment; and instinctively a natural leader of men and a lawyer was selected in the person of Willis A. Gorman. Governor Gorman had been a captain in the Mexican war. At a public meeting which was held immediately upon the call for troops, Governor Gorman said: "The time for talking has passed, and the time for fighting has come. I am going, and I have two sons; one of them shall go along or he cannot live in my house." Governor Gorman was promoted to brigadier general October 1, 1861. It may be mentioned here that Governor Gorman's words at the public meeting referred to were no idle threat, and that Richard L. Gorman was promoted from the ranks of the First Minnesota to a lieutenantancy in the Thirty-fourth New York Infantry. In a description of the battle of Fair Oaks occurs these words: "Gorman was moving up and down his glorious line, exhibiting fiery enthusiasm, and enjoying the proudest hours of his life."

The organization of other Minnesota regiments followed quickly, and every company which went to the front had its recruits from the bar of the state. Many, like John B. Sanborn, Wilkin and a score of others, achieved special distinction. And many members of the bar who were soldiers but were then too young to command have since added luster to the annals of Minnesota. Men like Chief Justice Start, Judges Loehren, Collins and Searle; lawyer governors McGill, Austin, Swift, Davis and Nelson, made individual records upon the

fields of battle that guaranteed their future value as citizens in times of peace. Indeed, a complete record of the heroic service in the war of the rebellion and the Sioux war of members of the bar of Minnesota now living and holding honorable place in affairs would fill volumes.

In every field of service which has aided the progress of Minnesota lawyers have been foremost. Not merely in lines of legislation in which the trained lawyer is naturally put forward by his fellow citizens in the capacity of leadership, but one has only to recall the names of W. D. Washburn, A. B. Stickney and Thomas Lowrie to realize that many of the most important enterprises in the development of Minnesota and the entire northwest have resulted from the energy and foresight of members of the bar of the state.

## CHAPTER IX.

### BIOGRAPHICAL SKETCHES OF CUSHMAN K. DAVIS, JOHN PATTERSON REA AND LEVI M. VILAS.

#### CUSHMAN K. DAVIS.

The late Cushman K. Davis was born in Henderson, Jefferson county, New York, June 16, 1838, the son of Horatio Nelson Davis and Clarissa Cushman, who was a lineal descendant of Thomas Cushman and Mary Allerton. Before the close of the year in which he was born the family removed to the territory of Wisconsin, so that his entire life, practically, was passed in the northwest. His father, a pioneer and a man of ability, became prominent in the affairs of a state to which he had emigrated while it was still a territory, serving as senator several times in the legislature of Wisconsin, and also serving nearly four years as captain in the Twenty-eighth Wisconsin regiment during the civil war. The early education of Cushman K. was acquired in the frontier schools of the territory, and the first one which he attended was in a log school house. This was the prevailing style of school house in the territory of Wisconsin fifty-five years ago, and for some years later. He attended Carroll college in Waukesha until he had completed the studies of the junior year, and then entered the University of Michigan, graduating in the classical course in 1857. Like many eminent men who achieve greatness for themselves, he graduated very young in years, but with the intellectual cultivation and power of mature manhood. Mr. Davis took up the study of law and prepared himself for practice, but in 1862 enlisted in the Twenty-eighth Wisconsin Infantry, and was elected first lieutenant of Company B. His service was in the Vicksburg campaign and subsequently in Arkansas. He was a member of the important expedition that captured Little Rock, and continued to perform his duty in the

field with a division of the army which had no opportunity for brilliant achievements. His health was much broken by service in the miasmatic climate and exposure in the neighborhood of the pestilential swamps of Arkansas, so that before the close of 1864 he tendered his resignation and returned to his home. Immediately thereafter he settled at St. Paul, Minnesota, which had even then more than local fame as a health resort. A stranger, without prestige or advantageous aids, with not even a letter of introduction from influential friends, he began the practice of law. He was favored with natural ability, ambition, courage, and the power of strenuous application, and with such faculties he won his way, step by step, holding firmly any ground gained by the force of his will, and that driving, imperious necessity which is sometimes the best capital to insure rapid and permanent advancement. He mastered the philosophy and principles of the law, and was faithful to his clients, whether the fees received were large or small. Within two years his opportunity to gain distinction at the bar came to him in his engagement to defend George L. Van Solen, indicted for murder. It was a celebrated case because of the prominence of the accused, and the strong network of evidence woven around him by skillful prosecution. Even down to the present time members of the bar cite the case and quote it on account of the interesting and unique features developed during the trial, and the skill displayed by the young lawyer in releasing his client from the net and securing a verdict of "not guilty." The case won him fame and more clients. He continued in the practice with increasing business and marked success, and won additional renown, in 1878, by his defense of Judge Sherman Page, on trial before the senate of Minnesota under articles of impeachment. In this case he was associated with other able counsel, but the issue extended and broadened his well earned fame, especially when the defense was both able and successful. The judge was acquitted. Mr. Davis was at all times devoted to the law. He regarded it not simply as one of the learned professions, but the greatest of them all in the opportunity it affords for intellectual growth and the exercise of keen analytical powers. Above all else, he

esteemed it as the chief instrumentality for securing justice between man and man, as well as between nations. The systems of jurisprudence in the states, the laws of the United States and international law have engaged his profound admiration and for many years commanded his deepest thought and most strenuous application. That he did not apply himself to the law simply for the purpose of acquiring wealth or gaining professional renown is evidenced by the fact that he never accepted a salary from a corporation agreeing to render it exclusive service, although his talents would have commanded an enormous salary at any time during the last twenty years of his life. He preferred a general practice, with freedom to accept the cause of the client who first applied for his services. He therefore appeared as frequently against corporations as for them in the courts of his state. The records of the appellate courts disclose the history of his connection with the most important litigation carried on in Minnesota for the past thirty years. Notwithstanding his long service in public office, his continuance as the head of the firm of Davis, Kellogg & Severance showed his strong preference for the practice of law. Mr. Davis, when yet a young man, attracted attention, both as an advocate in the forum and as political orator, and in 1867 he was elected to the house of representatives in Minnesota. The following year he was appointed United States district attorney, an office whose duties were in line with his profession, and in harmony with his taste. After serving five years, however, he resigned to accept the nomination for governor, offered by the republican party. He took the initiative in securing the enactment of a statute regulating the traffic of railroads, both as to passenger and freight rates. He conceived that the right of such regulation was inherent in the state, and proceeded to realize the conception in law. He declined a renomination for governor to resume the practice of his profession, which he continued without further interruption until he was chosen by the legislature of 1887 to represent his state in the senate of the United States. He was re-elected in 1893, and again in 1899. Before the close of the first term Senator Davis attracted more than average

attention as a figure in national politics; and before the close of his second term he had become famous, both for national and international statesmanship. As chairman of the senate committee on invalid pensions he was largely instrumental in securing the enactment of a pension law so broad and just in its provisions as to receive grateful acknowledgment from the soldiers and command the approval of the taxpayers. This alone is an achievement on which the fame of any statesman might rest securely through the coming ages. He was the champion and the most effective instrumentality in securing the improvement in the government canal at Sault Ste. Marie. It was inadequate to the enormous demands of the commerce of the Great Lakes, unless the lock could be speedily constructed and the channel could be broadened and deepened. The demand was for immediate beginning and early completion. In the emergency Senator Davis conceived the idea of having the work done by contract in advance of an appropriation, thus pledging the government to make from time to time appropriations sufficient to cover the contract price, so that it might be available as needed, and the public work of so great importance might not be compelled to wait on the humor of congress for partial appropriations in accordance with the general practice of the government in constructing its public works. The work on the canal was pushed with amazing celerity, and its completion not only relieved the congestion and gave a new impetus to the agriculture, commerce and manufactures of the northwest, but was also a tribute to the genius of the senator, whose conception saved so much time on the work of construction. At the beginning of his second term Senator Davis was placed on the senate committee of foreign relations, and in four years became chairman of the committee. His study of international law and diplomacy was so thorough that he was soon recognized in the senate as authority on all questions affecting the relations of our government with other powers and on the whole subject of international law. An appointment to the chairmanship of that committee not only confers distinction, but in times of contention with foreign nations fixes a responsibility from which

a timid or a weak man may well shrink. He opposed the policy of President Cleveland toward Hawaii in 1896 in a speech of great power, which attracted favorable notice and comment throughout the country. His understanding of the essence of the issue between Great Britain and Venezuela, growing out of the disputed boundary, enabled him to mark the course and establish the lines on which the dispute was settled by arbitration and treaty stipulations. As chairman of the committee he had charge of the treaty providing for the annexation of Hawaii; and when the treaty failed to receive the votes of two-thirds of the senators, essential to the ratification of a treaty, he boldly prepared and secured the passage of a joint resolution requiring only a majority of the votes in each house to give it the force of law. During the period immediately preceding the opening of hostilities with Spain, on account of Cuba, Senator Davis was a busy man. He drafted and offered the report of his committee on the strained relations of our government with Spain, due to the destruction of the battleship "Maine." He reported to the senate the resolutions demanding the withdrawal of Spain from Cuba and the adjacent waters, and empowering the president to employ the military and naval forces of the United States to effect the removal, if the Spanish government should fail or refuse to comply with the demand. His course throughout the critical period was marked by dignified statesmanship and judicial temper, such as to evidence his high qualification for the weightier and yet more delicate responsibility placed upon him by the president in selecting him as a member of the high joint commission which assembled in Paris during the autumn of 1898 to negotiate a treaty of peace. He was one of the ablest and most patient members of that commission. The conferences were sometimes vexatious and the outlook discouraging; but the treaty of Paris, signed December 10, 1898, by all of the American and Spanish commissioners, is a grand triumph of brilliant diplomacy and progressive statesmanship on the part of representatives of the United States. Senator Davis was a many-sided man. He was author, orator, student of history and of the biographies of Shakespeare and Napoleon. He

wrote a book on "The Law of Shakespeare," and his library contains a magnificent collection of books about and portraits of Napoleon. He has discussed in magazine articles the government's foreign policy and the construction of a canal around Niagara Falls by the United States, and a deep waterway thence to the Atlantic. He was thoroughly an American in lineage, character, instinct and patriotism. As a public servant Senator Davis worked hard and conscientiously. His committee assignments suggested the versatility of his talents, estimated by the body of which he had been a member for more than a dozen years—on the judiciary, on foreign relations, on territories, on Pacific railroads, on the census, and on forest reservations. He was always candid and courageous, never a time server. He spoke with timely pertinence and unanswerable logic in anticipation of the action of President Cleveland in 1894 in sending United States troops to Chicago to protect the government's property and restore public order during the riots incident to the great strike. His patriotism is above the partisan, as his statesmanship is above the political. He had creative ability and constructive genius, and stood in the fore rank of the men relied upon to formulate the nation's policy in the treatment of new questions as they arose. He had the incorruptible integrity and historic fortitude which gave to the Puritans character and individuality and success. Mr. Davis was a member of the Grand Army of the Republic, and worshiped with the Congregationalists. He was married in 1886 to Anna Malcolm Agnew, of St. Paul. A man of prominence in the affairs of the state says of Senator Davis:

"I have lived in the state of Minnesota all my life, and have known personally all the public men of both parties. I do not hesitate to say that, in my opinion, Senator Davis possessed more of the elements of greatness than any other citizen of the state, living or deceased. He was a man of many parts, and in whatever light you may view with his versatility or resources. As an advocate before the jury he ranked with Webster, Pierce and Choate, and as an orator and public speaker he had no rival in the northwest. He had a marvelous literary style, peculiarly his own and distinctly American. It is a





*John P. H. H.*

source of wonder to his friends how such a busy man as he was all his life could acquire such a classical style of literary finish as a writer. He was an omnivorous reader, and seemed to have retained and stored away every little point of history, ancient or modern. He was entirely familiar with the writings of Darwin, Spencer, Huxley and Voltaire, and was a close student of Shakespeare. He was, without doubt, the only man in the entire northwest who ranked equally high as orator, statesman and diplomat."

Senator Davis died at his home in the city of St. Paul in 1901, at the very height of his public career.

### JOHN PATTERSON REA.

John Patterson Rea, ex-soldier and past commander-in-chief of the Grand Army of the Republic, was born in Lower Oxford, Chester county, Pennsylvania, October 13, 1840, and died at his residence in Minneapolis, May 28, 1900.

His father was Samuel A. Rea, and a son of Samuel Rea, a soldier in the revolution.

John P. Rea was educated at the common schools and Hopewell academy, of Lower Oxford, and graduated from the Ohio Wesleyan university, Delaware, Ohio.

He studied law for a few months at Piqua, Ohio, but completed his studies with Hon. O. J. Dickey, of Lancaster, Pennsylvania, and was admitted to the bar August 20, 1868. He practiced in Pennsylvania until December, 1875, and in January of the following year he removed to Minneapolis, and accepted the editorship of the *Minneapolis Tribune*, a position he filled for about fifteen months, when he resumed the practice of law. He was a member of the following law firms in Minneapolis: Rea & Hooker, Rea, Hooker & Woolley, Rea, Woolley & Kitchel, Rea & Kitchel, Rea, Kitchel & Shaw, Rea, Miller & Torrence, Rea & Hubachek, and Rea & Healy.

The highest tribute to the life and character of Judge Rea that could be prepared is contained in the following characterizations by

those who were intimately acquainted with his official and private life. No monument erected to mark his last resting place will bespeak for the man what he deserved like these kindly words from the pens of those who knew him best; no pen picture could more instill into the minds of young attorneys the value of emulating his pure example and courage, to leave a name to be honored and revered by his family and friends.

## IN MEMORIAM.

*(Prepared by Judge Daniel Fish for the Committee of the Hennepin County Bar Association.)*

"Less than sixty years measure the earthly duration of a life, honest, useful, and pure as publicly exhibited, and beautiful in the thoughts of those who knew it best.

"It was a life which, until assailed by fatal disease, was crowded with worthy deeds. Born in southeastern Pennsylvania, of the best revolutionary blood, the boy passed from the wholesome discipline of toil and study to the duties of a teacher. The outbreak of the civil war found him thus engaged in a neighboring state. Within two days after the fall of Fort Sumter he was enrolled as a soldier of the Union. Four months later, having completed his first term of military service, he re-enlisted in the First Ohio Cavalry. Before his majority he wore the insignia of a lieutenant. Twice thereafter he was promoted in recognition of conspicuous gallantry in action. After more than three years of incessant campaigning, with health undermined by its hardships, he was obliged to resign the senior captaincy of his regiment, retiring as its major by brevet. Only ten days in all that time was he absent from his command, and during eight of these he was a prisoner of war. As significant of his genial character, it should be remembered that in that brief period attachments were formed with his captors which, being renewed after the war, ended only with his death.

"By an effort of the will which only soldiers can fully appreciate, he turned from the exciting life of a cavalry officer to the completion of his education, being graduated from Wesleyan university, with unusual honors, in June, 1867. The next two years were devoted to preparation for the bar, to which he was admitted at Lancaster, in his native state. After four years of practice there, during which his

patriotic zeal and magnetic eloquence forced him into political prominence, he was appointed to the revenue service by President Grant. Seven years later, at the beginning of 1876, he removed to Minneapolis, where, after fifteen months of brilliant editorial work on the *Tribune*, he returned to the practice of law.

"Almost immediately he was chosen as our probate judge, continuing two terms in that responsible office and declining a second re-election. On May 1, 1886, he was appointed one of the judges of the district court, and in the following November was elected for the constitutional term by unanimous vote of the district. May 1, 1889, he resigned that high station to resume what, to him, were the more congenial duties of a practitioner at the bar.

"It would do violence to one of the finest traits of Judge Rea's character to omit, even from this brief tribute, all mention of his relations with the ex-soldiers of the civil war. He was one of the founders of the Grand Army of the Republic, a constant and a zealous friend of that great fraternal order. Naturally he rose through successive positions of trust to be its commander-in-chief, which distinction he prized above all other honors, because it came unsolicited from his comrades in arms whom he loved. It cannot fail to mitigate their bereavement in his too early death to remember that he would have wished it to come, as it did, so that the last sad offices might appropriately be rendered on the day set apart by a grateful nation for the soldiers' memorial of flowers.

"Of Judge Rea's public career it remains only to say that upon the enactment of the present bankruptcy law he was appointed a referee thereunder and continued in that office to the end.

"A man thus constantly called to varied and exacting public employments furnishes, even in the barest outlines of his biography, sufficient proof of high character and commanding ability. Of John P. Rea it can truly be said that no call found him unprepared and no duty appealed to him in vain. It was inevitable that in the sharp stress of litigation criticism should sometimes be visited upon him, but if there were seeming defaults, all were easily traceable to those charming qualities which made him so lovable as a man. We will never forget how solicitous he was that no wrong should result from his rulings, nor how keenly he felt the disappointments and defeats which must fall upon one party or another in the practical administration of the law. That sensitiveness to the demands of justice and that alert

sympathy with the feelings of litigants and counsel which lead a just judge to defer the decisive word until every shred of truth can be elicited and the last argument advanced, while they may not contribute to immediate reputation, will live long in the memories of men.

"But there was nothing of weakness in his painstaking search for the truth, nor any lack of firmness in his assertions of it when found. Patient and cautious in forming his opinions, no personal consideration could deter him from carrying them into effect. He was as brave in civic duty as he had been fearless in the trooper's saddle; he appreciated the dangers and the hardships of loyalty to his convictions, but was loyal, nevertheless.

"In intellect and learning he was well equipped for the practice and application of the law. Quick to perceive and accustomed to analyze, it was a pleasure to argue before him, or with him, the frequently perplexing questions which engage the attention of the bar. Hence, although it is often painful to one of his kindly nature to inflict the consequences of judgment, he yet exercised the judicial function with marked success. Comparatively few were the appeals taken from his decisions and the reversals were fewer still. The record of his service as a judge places him, in this respect, in honorable competition with the many able jurists who have adorned our district bench.

"Above all this, however, stands his personal character as citizen, gentleman and friend. Beyond every other encomium he would desire the simple tribute of affection which was the light of his life. Few men have more richly earned an honest fame; not one in all our circle has so gently bound us in the bonds of love. Blameless in walk and conversation, responsive to every call of duty, sincere and resolute in devotion to the right, greatest of all in the gentle grace of his heart. Upon some page of the record which reveals so much of selfishness and strife let us inscribe this memorial of one who, in his service here and in all his fellowship with men, so fitly symbolized that highest virtue, which, though it suffereth long, is yet unceasingly kind.

"CHAS. J. BARTLESON,

"A. H. YOUNG,

"DANIEL FISH,

"WM. E. HALE,

"HENRY G. HICKS.

*"Committee."*

(By Chas. J. Bartleson.)

"In presenting this memorial I wish to add my tribute to the personal worth and charming character of our departed brother. Others may speak of his high achievements as a soldier, lawyer, judge, but he was to me my warm personal friend whose loss I mourn as a brother.

"It is often said that to know a man well you should travel with him. I have traveled often and far with Judge Rea. We have loitered together upon the white sands of the gulf coast, the broad plains of Texas, by the placid waters of the Pacific, on the far famed beaches of the Atlantic coast, under the roar of Niagara, in the mountain regions of east Tennessee, and I have always and everywhere found him the same kind, warm-hearted gentleman and friend.

"It was impossible to quarrel with him. He was earnest in discussion and vigorous in debate, but never sarcastic, and never tempted to say anything designed to hurt the feelings of another. Those who knew him best, I believe, admired him most for his personal purity of character, thought and speech. His character was always that of an upright, honorable and patriotic citizen, above reproach. His thoughts were pure and clean, and when in his prime came from him in speech with a candor, vigor, eloquence and persuasive power rarely attained by man.

"His kindness of heart, honesty of purpose, sweetness of temper, and cordiality of manner, attracted to him a host of friends in every corner of this broad land, which has been one of the marvels of my observation in our travels. I think I am within the limits of moderation when I say that he had more friends who met him with a warm grasp of the hand and cordial smile, which spoke of unmistakable welcome, in every quarter of the country we have visited, than I could number in the whole world (aside from my home associations), and I am glad to add my convictions that he deserved them all.

"Let me add that if sweetness of temper, kindness of heart, purity of life, love of country, and devotion to family and friends are keys of admission to the better side of the unknown beyond, my belief is that Judge Rea has encountered a shorter probation than may fall to the lot of most of us."

Judge Rea was a member of the Phi Kappa Psi college society at Ohio Wesleyan university, and was president of the executive council

of that fraternity for two years, was a member of the Sons of the Revolution and the Loyal Legion, holding the office of junior vice-commander for Minnesota for one year. He was brigadier general of the staff of Governor Hubbard for two years, and a member of the board of visitors of West Point academy for the year 1893. He was always a republican, but refused in 1892 to support the republican candidate for president, preferring Mr. Cleveland. Judge Rea was a member of the Presbyterian church. He was married October 26, 1869, to Emma M. Gould, of Delaware, Ohio, who survives him.

#### LEVI M. VILAS.

Judge Levi M. Vilas, of St. Paul, was born at Chelsea, Orange county, Vermont, February 17, 1844. He was the fourth son of Levi B. Vilas and Esther G. Smilie, his wife, and both of his parents were of families well known in Vermont for strong characteristics, prominence and success.

In 1851 his father removed to Madison, Wisconsin, for the purpose of educating his family of boys under his own care at the state university. He was for many years among the most prominent and representative citizens of the city and state of his adoption, and there he finally ended his days and lies at rest.

Other children were William F., four years older than Levi, who was a member of President Cleveland's first cabinet, and afterwards senator from Wisconsin; Charles H., a surgeon of Chicago, late president of Hahnemann college, and Edward P., still in active practice at the bar in Milwaukee.

The subject of this sketch possessed the distinctive traits of character, mental brilliancy and power that characterize the family. He entered the University of Wisconsin as a freshman at fifteen years of age, was graduated with honor at the age of nineteen; began his studies at the Albany law school in 1863, was graduated in 1864, and admitted to practice in the supreme courts of New York and Wiscon-

sin the same year. One year and a half were spent by him in government service in the west, and he then began his active professional work in the city of Eau Claire, Wisconsin, in 1868. The city in which he located was at that time rapidly expanding under the stimulus of the vast lumbering interest of the state, and the work of a lawyer was fraught with responsibility, requiring courage and careful business judgment, as well as legal learning. Although Mr. Vilas was a scholar with all a scholar's instincts, he had the peculiar mental grasp which enabled him to deal with vexing business problems, which he handled with certainty and success. His residence was in a republican city and county, and his political faith and associations were democratic and always openly avowed, and yet his fellow citizens freely marked their estimate of his trustworthiness by bestowing upon him such offices and honors as were in their gift, and throughout the state he was regarded as destined to high preferment. He was the first city attorney of Eau Claire, chosen upon the city's organization in 1872. In 1876 he was elected mayor; in 1877 he was elected district attorney of Eau Claire county, and re-elected in 1879. His most signal honor in Wisconsin, however, he received from his professional brethren, always the most reliable in just appreciation. In 1885 the State Bar Association of Wisconsin, contemplating a probable change in the supreme court, passed resolutions requesting him to become a candidate for the supreme bench. His elevation to the office would have been received with universal approbation by the lawyers of Wisconsin, but learning soon after the nomination that the then incumbent of the office, Judge Taylor, was not expecting to retire but desired to stand for re-election, Mr. Vilas declined the nomination in a letter to the committee of the bar association which, by its dignified tone and elevation of sentiment, did him great honor and showed his remarkable fitness for the place itself. Speaking of the office of supreme judge, he said: "No one could accept it without a sense of awe in view of the grave responsibilities it imposes. Professional learning, practical experience, great capability of labor, sincere honesty of thought and purpose and fearlessness in conviction are not only

to be demanded of the incumbent, but his usefulness must require a generous popular confidence and the united respect and support of the bar. It can, therefore, never be justifiably accepted as the reward of skillful self-seeking, in fact, and hardly less so, if candidacy were to be charged with that appearance." The whole letter, declining a candidacy to judicial place which would involve the strife of self-seeking, is one which so commends itself to the moral sense of the legal profession that it ought to be preserved and studied as a continuing object lesson to all who are desirous of judicial exaltation. It was the general feeling at the time of his removal to Minnesota that had he remained in the state of Wisconsin and his life been spared, he would inevitably have been called by the unanimous voice of the Wisconsin bar to that dignified position for which his ability and worth so well fitted him.

During his eighteen years' residence in the Wisconsin city he developed not only his legal and intellectual powers, but the genial character and wide knowledge of men which distinguished him in the few years in which he became known to the Minnesota public. He is remembered in Eau Claire by many men with whom he was personally and professionally associated as a fearless, capable advocate and strong lawyer, and a genial, devoted, steadfast friend.

In the "Bench and Bar of Wisconsin," published in 1882, it was then said of him by a professional brother who was capable of a true and just discrimination of his character, parts and estimation:

"His rank is acknowledged among the leaders of the bar of north-western Wisconsin. An extensive business and large clientage from the prominent and energetic men, who have developed the great interests on the Chippewa river and its tributaries, attest the confidence and appreciation in which he is held in that community. The writer of this sketch well knows the estimate placed upon Mr. Vilas by his professional brethren. By them he is universally regarded as well forward in the front rank of the lawyers of that state; clear and accurate in judgment, thorough in learning, conscientious and painstaking in the preparation of causes, and strong and vigilant in trial. He has the gift of expressing his views in a terse, lucid and forcible style,

admirably adapted to legal argument. His mind is strongly judicial, and his qualities are commonly accepted as prophetic of distinction on the bench in due season. A genial address and manner, an open bearing, a kindly, sympathetic nature, grounded upon a character of sterling integrity, render him deservedly popular in his community, and with his profession. Although too thorough a lawyer to be active in politics and adhering to the party in minority in his city and county, marks of popular favor have come to him unsought, and in spite of party prejudice "

In 1886 he moved with his family to St. Paul and began his professional work in that city, and the same gifts which had rendered him so valuable to friends and clients in his former home soon brought him a large and rapidly increasing clientage. After two years' residence and practice in St. Paul the creation of two new district judge-ships in Ramsey county afforded an opportunity to conspicuously mark the esteem which his character and ability had so quickly won. While absent from the city and without his knowledge, or a single effort, direct or indirect, on his part, his brethren of the bar joined in recommending him to the governor of Minnesota for the appointment, and disregarding his political opposition, perhaps even more willingly for it, Governor Merriam ratified their choice. His acceptance was a satisfaction to all and his performance of his judicial duties during the short time he was spared to the bench manifested the admirable fitness of the selection. The strength and clearness of his mind, his incorruptible integrity, his high moral courage and fine balance of powers eminently fitted him to adorn the bench. His brethren of the bench and bar recognized him as a man whom they delighted to honor.

Senator Davis said of him: "He was a man of sterling integrity. He possessed a robust and manly intellect, and was always distinguished by his frankness."

Hon. James V. Lusk said of him: "There never has been a lawyer to whom a client could entrust his case with more certainty of knowing that it would be looked after. He was thorough almost to a fault."

Judge Brill said: "One could not remain in his association long and fail to discover the qualities of mind and heart which make men

great. His books were his familiar companions. He regarded them almost as one regards his friends, but his learning was not mere pedantry. He digested cases into principles; and learning in the crucible of his intellectual processes became wisdom. His uniform courtesy, his unselfishness, his wide information, his gifts of conversation and his quaint humor made him the most companionable of men. No man can be what I have already said he was and not be a good neighbor, a true friend and a wise and tender husband and father."

Judge Vilas possessed an unusually genial and affectionate nature which especially endeared him to his family and his personal friends. It would be difficult to think of him without associating him in mind with his family. In 1869 he was married to Ella C. Slingluff, of Eau Claire, daughter of the Hon. Levi Slingluff and Eliza Ann Fore. She died in 1879, leaving three daughters, Jessie C., Elizabeth D., and Kate P. Vilas, all of whom are living.

In 1885 he married Lizzie Stuart Ludlam, of Chicago, Illinois, who accompanied him to his home in the city of St. Paul, and by this marriage was born to him his daughter, Margaret. It is pleasant to consider what might have been accomplished had life been spared to such a nature for a greater length of years. Perhaps for himself he attained life's best gifts—professional success, the respect and confidence of his fellows, the regard of his friends and the tender affection of his family. He was courteous and considerate of all. His younger brothers in the profession found him just and generous, even as an opponent, and his equals in years and experience knew his fairness and his strength. Longer years would have been only years of service to others. The bench early lost that best of all its possessions, a capable, honest and upright judge.

He died August 25, 1889, at the family homestead in the city of Madison, Wisconsin, then the residence of his mother, Mrs. Esther G. Vilas. It seemed especially fitting that his life should end at his old home and that he should lie in the cemetery of the beautiful city which still remembers him as one of her best beloved children, and in a state which regarded him as one of her honored citizens.





AARON GOODRICH.

Chief Justice Territorial Supreme Court, 1849-1851.



WILLIAM H. WELCH.

Chief Justice Territorial Supreme Court, 1853-1858.

## CHAPTER X.

### THE SUPREME COURT.

#### IN TERRITORIAL DAYS.

The supreme court of the territory and state of Minnesota has existed for fifty-five years. During the nine years of the existence of the territorial supreme court there were ten judges, all appointees of the federal government. The members of the first court were appointed by President Taylor in 1849, and were Aaron Goodrich, chief justice, and David Cooper and Bradley M. Meeker, associate justices. Mr. Goodrich was a native of New York, but was appointed from Tennessee. Mr. Cooper, a Marylander, was appointed from Pennsylvania, and Mr. Meeker, born in Connecticut, was appointed from Kentucky. Henry L. Moss was appointed United States attorney, and Joshua L. Taylor, United States marshal.

Upon the arrival of Alexander Ramsey, who had been appointed territorial governor by President Taylor, he issued a proclamation dividing the territory into three judicial districts; the first to comprise the area lying between the Mississippi and St. Croix rivers and extending north to the British possessions, and to be presided over by Judge Goodrich; the second district embraced all that part of the new territory west of the Mississippi river and north of the St. Peter (now the Minnesota) river, Judge Meeker to preside; the third district comprised that part of the territory south of the St. Peter river, to which Judge Cooper was assigned.

Governor Ramsey's proclamation also specified that court should be held in the first district at Stillwater on the second Monday of August, 1849; in the second district at St. Anthony Falls on the third Monday of August, 1849; and in the third district on the fourth Monday of the same month and year.

The first term of court was duly held at Stillwater, Chief Justice Goodrich being joined on the bench by Judge Cooper. There were thirty-five cases upon the docket, but only a few of these were tried during the six days' term.

Judge Meeker opened his court at St. Anthony Falls the following week, using the old and dilapidated government mill for a court room.

More elaborate preparations were made for the opening of court in the third district by Judge Cooper.\*

Before further terms of court were held the first territorial legislature convened and the districts were remodeled to conform to county divisions which were established. Under the new arrangement the first district was made up of the counties of Washington, Wabasha and Itasca, which then included the eastern border of the territory. Judge Cooper was given this district. The second district was designated as Ramsey, Dakota, Wabnata and Mahkahto counties, over which Judge Goodrich presided. The third district, assigned to Judge Meeker, seems to have included all of the territory west of the Mississippi and north of the St. Peter rivers.

This new division resulted in Judge Cooper's holding the second active term of court in the territory, which occurred at Stillwater in February, 1850.

On this occasion the first murder trial under the laws of the territory was held, and a boy of thirteen years who had shot a companion on the street was convicted of manslaughter on the ground that "the firing of a gun across a public highway where people were passing was an unlawful act." Judge Cooper sentenced the boy to ninety days' confinement in the guard house at Fort Snelling.

The same spring (1850) Judge Goodrich held the first term of court in St. Paul in a room adjoining the bar-room of the American Hotel at the corner of Third and Exchange streets. The most important cause seems to have been an action by the United States government

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\* See Chapter II.





B. B. MEEKER.

Associate Justice Territorial Supreme Court  
1849-1853.



A. J. CHATFIELD.

Associate Justice Territorial Supreme Court.  
1853-1857.



MOSES SHERBURNE.

Associate Justice Territorial Supreme Court  
1853-1857.



R. R. NELSON.

Associate Justice Territorial Supreme Court.  
1857-1858.

to recover on the bond of Henry Jackson, postmaster at St. Paul. The government secured judgment for \$150.

The first term of the supreme court of the territory was held in July, 1851, Chief Justice Goodrich presiding, assisted by Justices Cooper and Meeker.

Under the organic act of the territory the terms of the judges of the supreme court expired at the end of four years. But in January, 1852, Jerome Fuller, of New York, was appointed to succeed Judge Goodrich as chief justice. Mr. Fuller served only until December 16, 1853, and was succeeded by Henry L. Hayner, of New York. Judge Hayner served but a short time and never presided at a supreme court term.

In July, 1852, the second term of the supreme court was held, and Chief Justice Fuller and Associate Justices Cooper and Meeker occupied the bench.

In the spring of 1853 President Pierce appointed William H. Welch, who had taken residence at Red Wing, chief justice of the territorial supreme court, and Moses Sherburne, of Maine, and Andrew G. Chatfield, of New York, as associates.

Judge Welch was a native of Connecticut, was a graduate of Yale college and its department of law, and had practiced several years in the territory of Minnesota.

Judge Chatfield had served with distinction in the state legislature of New York, and secured his appointment to the supreme bench of the territory through the influence of Gen. H. H. Sibley. He was, as associate justice, placed in charge of that district south of the St. Peter river (now Minnesota), and subsequently held district court in most of the organized counties of his district. He retired from the bench in 1857, resumed practice of his profession, and in 1870 he was appointed judge of the eighth judicial district of the state of Minnesota, which position he held until his death in 1875.

Judge Sherburne was a native of Maine, where for several years previous to his appointment to the supreme court of the territory of

Minnesota he had held a judicial position and was considered to possess unusual ability. After retiring from the judicial bench he began practice in St. Paul, and was subsequently appointed to the commission intrusted with the work of revising the state statutes.

In 1857 Judge Welch was reappointed chief justice by President Buchanan, and continued to serve until the organization of the state of Minnesota in 1858; thus attaining the distinction of serving the longest term of any of the judges of the territorial supreme court.

April 23, 1857, President Buchanan appointed Rensselaer R. Nelson and Charles E. Flandrau to succeed Judges Chatfield and Sherburne. Both had already become prominently identified with the territory as leading citizens and lawyers.

Judge Nelson's father, Samuel Nelson, was for many years a member of the supreme court of the state of New York, and later was an associate justice of the supreme court of the United States, so that Judge Nelson's early career was generally considered by his friends as an inheritance from a most distinguished father. But Judge Nelson's ambitions were broader than the state of New York, and in the spring of 1850 he started for the then "Far West" and eventually arrived in St. Paul, where he still resides, one of the foremost citizens of the great commonwealth of Minnesota.

It was while Judge Nelson was upon the territorial supreme bench that the question of the removal of the capital from St. Paul to St. Peter was brought up, and which Judge Nelson decided in favor of St. Paul. Judge Nelson's decision is given in a previous chapter of this book, and is something of great historical interest. Judge Nelson was appointed by President Buchanan judge of the United States district court for the district of Minnesota, May 11, 1858, upon the organization of the state, and occupied that position until May, 1896, when he retired at the age of seventy years.

Judge Flandrau, a sketch of whose life appears elsewhere in this work, served but a short time upon the bench of the territorial supreme court, but while there was distinguished for the rapidity with which he disposed of business before his court.





LAFAYETTE EMMETT.

Chief Justice Supreme Court 1858-1865



THOMAS WILSON.

Chief Justice Supreme Court. 1865-1869



JAMES GILFILLAN.

Chief Justice Supreme Court 1869-1870.

In referring to the territorial supreme court Judge Elliot, of Minneapolis, says: "The record made by the court is eminently respectable, and but few of its decisions have in terms been overruled. During its life from June 1, 1849, to May 24, 1858, there were filed 161 decisions, all of which are reported in the first volume of the state reports. Naturally the greater number are devoted to questions of pleading and practice, and the various proceedings common in a new country, where the courts are chiefly engaged with questions of a commercial character. The adjective as distinguished from the substantive law principally occupied the attention of the court. The judicial machinery had to be put in running order, and the bar instructed in the arts of applying the science of the law. The administration of justice was in a chaotic condition, and many of the important questions had to be decided upon first impressions and without a guiding precedent."

Minnesota became a state in 1858, and May 24th of that year state officers assumed their duties.

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## THE SUPREME COURT.

### AFTER MINNESOTA BECAME A STATE.

The first chief justice of the supreme court of the state was Lafayette Emmett, and the associate justices were Charles E. Flandran and Isaac Atwater.

Judge Emmett was born in 1822 at Mount Vernon, Ohio. He studied law with Columbus Delano, who afterwards became secretary of the interior of the United States. Judge Emmett began the practice of law in 1843. He came to the territory of Minnesota in 1851, and President Pierce appointed him attorney general of the territory. He served seven years as chief justice of the supreme court of Minnesota, and then resumed practice of law in St. Paul. He later moved to Faribault, and still later, in 1885, to New Mexico.

The constitution of the state fixed the terms of supreme court judges at six years, so that the terms of the members of the first court

expired with the year 1864; but in July of that year Judges Flandran and Atwater resigned.

To fill the vacancies Thomas Wilson and S. J. R. McMillan were appointed, both becoming chief justices later.

Judge McMillan was a Pennsylvanian by birth, having been born at Brownsville in 1826. He graduated from Duquesne college in 1846 and was admitted to the bar in 1849. He came to Stillwater, Minnesota territory, in 1852, and upon the admission of the state became judge of the first judicial district. His appointment to the supreme bench occurred July 6, 1864, and in the fall of that year he was elected to the same position, and in 1870 was re-elected for a second term. While serving his term under the second election, Gov. Cushman K. Davis promoted him to the chief justiceship, in which position he served from April 4, 1874, to March 10, 1875, when he was elected United States senator from Minnesota. Senator McMillan served two terms with distinction, but was defeated for the third term by a political combination, which was a surprise to the best influences in the state. Senator McMillan then renewed the practice of law at St. Paul, where he ranked as one of the most distinguished members of the Minnesota bar until his death in November, 1897.

In the fall of 1864 John M. Berry was elected associate justice to succeed Judge Wilson, who had been elected chief justice. Judge Berry has the distinction of having served the longest time of any justice of the supreme court of the state, having occupied his seat nearly twenty-three years. He was more largely influential, it is said, than any other judge in molding the jurisprudence of the state. He was a man of decided literary attainments, and his decisions are considered models of diction and careful effort. Judge Berry died November 8, 1887, at his home in Minneapolis, appreciated by all citizens as one of the foremost men of Minnesota.

Following the election of the fall of 1864, the next change in the membership of the supreme bench came with the resignation of Chief Justice Wilson in July, 1869. The vacancy thus caused was filled by the appointment of James Gilfillan. His term expired with the open-





C. E. FLANDRAU.

Associate Justice Supreme Court, 1858-1864.



ISAAC ATWATER.

Associate Justice Supreme Court, 1858-1864.



JOHN M. BERRY.

Associate Justice Supreme Court 1865-1887.



GEO. B. YOUNG.

Associate Justice Supreme Court 1874-1875.



F. R. E. CORNELL.

Associate Justice Supreme Court, 1875-1881.



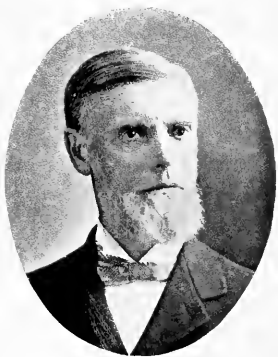
D. A. DICKINSON.

Associate Justice Supreme Court, 1881-1894.



GREENLEAF CLARK.

Associate Justice Supreme Court, 1881-1882.



WILLIAM MITCHELL.

Associate Justice Supreme Court, 1881-1900.



ing of the following year. Five years later, when Chief Justice McMillan resigned to become United States senator, Judge Gilfillan was again appointed to fill out the brief unexpired term. He was then elected to the position in the fall of 1875, and retained the position through successive terms until the close of 1894.

In the fall of 1869 Christopher G. Ripley, of Chatfield, Minnesota, was elected to the chief justiceship. Judge Ripley was a native of Waltham, Massachusetts, and was a direct descendant of Governor Bradford, of Plymouth. He was born in 1822, became a graduate from Harvard and came to Minnesota to practice law in 1855. His health became impaired and he resigned from the supreme bench in 1874. He then returned to his old home in Massachusetts and died there in 1881.

The resignation of Judge Ripley resulted (as previously noted) in Governor Davis appointing Judge McMillan to the chief justiceship, and in the selection of George B. Young for the position made vacant by Judge McMillan's advancement. Judge Young was only thirty-five years old at the time of his appointment, but during his term he gave evidence of special ability and fitness for the position.

Judge F. R. E. Cornell succeeded Judge Young by election in the fall of 1874, and served as associate justice from 1875 until his death in May, 1881, at his residence in Minneapolis. Judge Cornell was regarded as a man of the very highest ability and character. He was born in Chenango county, New York, November 17, 1821. He graduated from Union college in 1842 and was admitted to practice at Albany in 1846. He became a member of the state senate of New York and served two years. In 1854 he came to Minneapolis, and at once assumed a leading place in the local bar. He was a member of the state legislature several terms, and was attorney general of the state from 1868 to 1874.

In 1881 the legislature of Minnesota provided for the addition of two associate justices to the supreme court, realizing that the increasing business of the court required more judges to relieve the

accumulating burdens of its members, and on March 14, 1881, Greenleaf Clark and William Mitchell were appointed to these positions.

Upon the death of Judge Cornell, in 1881, D. A. Dickinson was appointed to the vacancy by Governor Pillsbury. Judge Dickinson, by subsequent elections, continued his term of office until January, 1894.

The unexpired term of Judge Cornell's office ended with the close of the year 1881, and Judge C. E. Vanderburgh, of Minneapolis, was elected. He was re-elected in 1887, and served until January 1, 1894.

November 16, 1887, Judge Loren W. Collins succeeded Judge Berry by appointment, and has been a valued member of the supreme bench until his resignation, which occurred recently, in 1904.

In January, 1894, Judges Dickinson and Vanderburgh were succeeded by Judge Daniel Buck and Judge Thomas Canty, those gentlemen having been elected in 1892 for the term beginning in January, 1894.

In the fall of 1894 Judge Charles M. Start, of Rochester, Minnesota, was elected chief justice and took his seat upon the supreme bench in January, 1895. He was re-elected in 1900, and is the chief justice at this time, 1904.

Calvin L. Brown was appointed associate justice of the supreme court by Governor Lind to succeed Justice Buck, resigned, and was elected to that office in 1898; still holding the position.

John A. Lovely was elected associate justice in the fall of 1899, and took his seat in January, 1900.

Charles L. Lewis was elected to the supreme bench in 1899, and has served since January, 1900.

The biographies of the gentlemen now constituting the supreme bench of the state of Minnesota will be found elsewhere in these volumes.

By the constitution of the state of Minnesota the office of clerk of the supreme court is elective and the term is for four years. The clerks of the supreme court since the admission of the state have been: Jacob H. Noah, May 24, 1858, to January 15, 1861; A. J. Van Vorhes,





CHARLES M. START.

Chief Justice Supreme Court. 1895-1907.



C. G. RIPLEY.

Chief Justice Supreme Court. 1870-1874



S. J. R. McMILLAN.

Chief Justice Supreme Court. 1874-1875.



JOHN A. LOVELY.

Associate Justice Supreme Court, 1900-1906.



C. L. BROWN.

Associate Justice Supreme Court, 1900-1906.



CHAS. L. LEWIS.

Associate Justice Supreme Court,  
1900-1906.



W. B. DOUGLAS.

Associate Justice Supreme Court.  
Recently Appointed.



January 15, 1861, to January 14, 1864; George F. Potter, January 14, 1864, to January 14, 1867; Sherwood Hough, January 14, 1867, to January 7, 1876; Sam H. Nichols, January 7, 1876, to January 5, 1887; J. D. Jones, January 5, 1887, to January 5, 1891; Charles P. Holcomb, January 5, 1891, to January, 1895; Darius F. Reese, January 7, 1895, to January, 1899; Carl A. Pidgeon was elected in 1902 and is the incumbent at this time.

The reporters of the supreme court are appointed by the court, and have been: Harvey Officer, May 24, 1858, to January 30, 1865; William A. Spencer, January 30, 1865, to June 15, 1875; George B. Young, January 15, 1875, to April 15, 1895; Henry B. Wenzell, May 14, 1895, and still holds the position.

## CHAPTER XI.

### TWO EMINENT CHIEF JUSTICES OF THE SUPREME COURT OF MINNESOTA.

#### JAMES GILFILLAN.

James Gilfillan, one of the most eminent lawyers and jurists in the record of the northwest, and who was for twenty years chief justice of the supreme court of Minnesota, was born at Bannockburn, in Sterlingshire, Scotland, March 9, 1829, and died at St. Paul, Minnesota, December 16, 1894. He was brought to the United States in his infancy, and was reared to young manhood in Oneida county, New York. He studied law in Chenango county, and at the law school of Ballston Spa, and was admitted to the bar at Albany in December, 1850.

In 1857, chiefly through the influence of his brother, Charles D. Gilfillan (now deceased), he came to Minnesota, locating in St. Paul. He formed a law partnership with his brother and soon had a lucrative practice. He was not showy or pretentious, but his natural talents, aided by his close application to his work, soon made him known as one of the best lawyers in the state.

The war of the rebellion dissolved his law partnership, and he left the court for the camp and abandoned his office for life in the tented field. In August, 1862, he enlisted in the Union army, and September 1, following, he was commissioned captain of Company H, Seventh Minnesota Infantry. The first year of his military experience was spent in service against the Indians in the forces under Gen. H. H. Sibley. He was in the battle of Wood Lake, Minnesota, September 23, 1862, and in all the battles of the Sibley expedition into Dakota in 1863. Going south with his regiment in the fall of 1863, he was in active service with the Sixteenth Army Corps in Missouri, Kentucky, Tennes-

see and Mississippi until early in the fall of 1864. September 7 of the latter year he was commissioned colonel of the Eleventh Minnesota Infantry. He was in command of his regiment in Tennessee from November, 1864, until June 26, 1865, when, the war having closed, he was mustered out with his regiment. He was an excellent officer, not assuming or demonstrative, but always cool and self possessed, intelligent and faithful in the performance of duty, and of calm, sturdy and unshaken courage.

After the close of the war he returned to St. Paul and resumed the practice of his profession. In July, 1869, a vacancy in the chief justiceship having been created by the resignation of Hon. Thomas Wilson, Gov. William Marshall, his former regimental commander in the Seventh Minnesota, appointed Colonel Gilfillan to the position, which he held until January, 1870. Retiring, he resumed his practice at the bar, and so continued until in March, 1875, when Chief Justice S. R. McMillan resigned, having been elected United States senator, and Judge Gilfillan was again appointed to the vacancy, this time by Governor Davis. In November following he was elected by the people, and he served, by re-election, continuously until his death, in December, 1894.

It has been frequently said that Judge Gilfillan was Minnesota's ablest and most distinguished jurist. Certainly he was an expositor of the law of the highest order, profound in his knowledge of the law and clear in its exposition. His opinions and decisions, voluminous as they are, cover the field of jurisprudence and are regarded not only as fully exhaustive of the subjects upon which they were rendered, but as highly authoritative on the questions decided. Like their author, they are dignified, yet plain; positive, but fair; established by reason, and grounded in justice. One of his intimate friends, himself a former justice of the supreme court, has written this of Judge Gilfillan:

"In the death of Chief Justice James Gilfillan the bench of Minnesota loses its most impressive figure, the state its most distinguished jurist. He was a lawyer of sound and accurate learning, of excellent judgment, of unquestioned probity. His talents were those of a safe

adviser and counselor rather than of a successful advocate. Hence he was regarded, by those who knew him best, as specially fitted for the bench, for the duties of which he was thoroughly equipped, both by temperament and experience. He came west in the early migration of young eastern men, who believed in the future of the new world then opening in this quarter. It never occurred to him that wide culture and high character would be out of place in the young and vigorous communities that were to transform the prairie wilderness into splendid commonwealths. He never found books and scholarship alien to the region in which industrial and commercial activity were the chief occupations of a struggling and eager people; nor did he consider a high sense of moral obligations and public duty incompatible with the legal profession.

"Promoted to the supreme bench by Governor Marshall, he served a generation of men ably, wisely, and honestly. Had he survived a few weeks longer, he would have retired from public life by the expiration of his term, leaving a noble record and example for all who shall come after him. Dignified in manner and rigorous in his exactions of duty, Judge Gilfillan was courteous, considerate, and, above all things, just. Neither political nor personal considerations ever influenced his official conduct, nor was he ever swayed by any private inducement in the performance of his public duties. Favoritism was alien to his presence and clamor would have disturbed him less than the passing wind. The presence of this or that attorney in a case was not tantamount to a judgment. He had no personal interests to promote outside his court or by collusion or understanding within it."

The lesson taught by Judge Gilfillan's life is that character is the greatest human achievement. It is a larger fact than genius, and about as rare a phenomenon as greatness; and neither are so common factors in business and professional life as they ought to be. In the best and truest sense Judge Gilfillan was a man of character. What he was he became by the inherent force of his own manhood. It was worthy of every effort to win and leave behind the distinction, the high repute and the fair name left by James Gilfillan.

After the death of the old whig party Judge Gilfillan was always a republican in politics, but never an active partisan. Personally he was of very quiet and unassuming manners. The superficial observer





*Chas. H. Start*

might have considered him austere and exclusive. The nobilities of his character were only to be learned by personal contact with him. Those who knew him best esteemed him most. He was a member of the Episcopal church, belonged to the Loyal Legion, and he had a host of personal admirers and his high talents and abilities were respected by everybody.

Judge Gilfillan was married June 4, 1867, to Miss Martha McMasters, daughter of Rev. S. Y. McMasters, an eminent divine and scholar, who was rector of Christ's (Episcopal) church of St. Paul from the close of the civil war until the time of his death in 1875. By this marriage there were seven children, viz., James S.; Katherine, now Mrs. Samuel Gilbert, of New York; Caroline, now Mrs. Trevor McClurg, and Martha, now Mrs. Webster Wheelock, both of St. Paul; Mary, Perry and Russell—the last deceased.

#### CHARLES M. START.

The present chief justice of the supreme court of Minnesota, Charles Monroe Start, is a native of Vermont, born at Bakersfield, Franklin county, October 4, 1839. He is a son of Simeon G. and Mary S. (Barnes) Start, and comes of old England stock. His parents were both of English descent, his remote paternal ancestors emigrating from the south of England to America in 1652. His father was a sturdy Green mountain farmer, and the judge's early life was spent on the paternal homestead. When he came to young manhood he passed the summer seasons at work on the farm and the winter in teaching school, to obtain the means of a better education. He studied law in the office and under the instruction of Judge William C. Wilson at Bakersfield, and was admitted to the bar in 1860. He was engaged in the practice of his profession when the war of the rebellion came. In July, 1862, he enlisted in the union army as a member of Company I, Tenth Vermont Infantry. He was commissioned first lieutenant of his company August 11, and on December 1, following, he resigned on a surgeon's certificate of disability. In October, 1863, he located

at Rochester, Minnesota, where he engaged in the practice of his profession, and where he has since resided. His established character as one learned in the law may be best understood by his official record. He was county attorney of Olmsted county for eight years. In 1879 he was elected attorney general of the state, and served from January 1, 1880, until March 12, 1881, when he resigned to accept an appointment to the office of judge of the third judicial district of the state. To this position he was elected without opposition for three successive terms, and was still in service when, in 1894, he was nominated on the republican ticket and elected chief justice of the supreme court. He took his seat January 5, 1895, and was unanimously re-elected in 1900. He has, therefore, been connected with the judicial system of the state as a public official for more than thirty years. These judicial honors have come to him without any effort on his part to obtain them. A distinguished jurist, now deceased, who had long known Chief Justice Start, said of him:

"The people of the third judicial district, over whose courts he presided so long, entertained such high admiration for his character as a man, and for his ability as a jurist, that he could doubtless have retained his position as district judge as long as he desired. When he came to St. Paul to assume his duties as chief justice of the supreme court, his high reputation as a man and a jurist had long preceded him; and while this may be neither the time nor place to speak at length of his services in his present position, it is sufficient to say that he has in all respects fulfilled the expectation of the people and the bar throughout the state. Judge Start possesses in a pre-eminent degree, the essential characteristics of every great lawyer or judge; both moral and mental honesty, which enables a man to discover what is just, and what to do. Possessing a strong love of justice, he scorns everything that savors of fraud or unfairness in dealings between man and man. These qualities, connected with his clear and bright intellect, could not fail to render him a good judge."

He was married August 10, 1865, to Clara A. Wilson, of his native village of Bakersfield, Vermont, daughter of his early preceptor, William C. Wilson, sometime judge of the supreme court of Vermont. Chief Justice Start and Mrs. Start have one child, a daughter, Clara L. He is an attendant of the Congregational church.

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Geo. B. Young.

## CHAPTER XII.

### BIOGRAPHICAL SKETCHES OF ASSOCIATE JUSTICES OF THE SUPREME COURT.

#### GEORGE B. YOUNG.

Judge George Brooks Young, of St. Paul, is a native of Boston, Massachusetts, having been born there July 25, 1840. His parents were both descended from early settlers in the Plymouth and Massachusetts Bay Colonies and represented families of consequence in the annals of New England.

He was educated in the schools of Boston and subsequently took a course in Harvard college and graduated in 1860. In the fall of that year he entered the office of the Hon. Henry A. Scudder, under whose direction he read law for about a year. In 1861 he returned to Harvard and was graduated from the law school of that institution two years later. In 1864 he went to New York City, and was for several months engaged in post-graduate study in the office of William Curtis Noyes; and in December of that year he was admitted to the bar. He next held, for a time, the position of managing clerk for David Dudley Field, after which he pursued an independent practice during the remainder of his residence in the east.

Mr. Young was thirty when, in April of 1870, he came in search of a new home in the northwest, locating at Minneapolis. He gained admission to the bar of the state, and during the thirty odd years of his citizenship in Minnesota he has been a most earnest and efficient member of the profession. In April, 1874, Mr. Young was appointed associate justice of the state supreme court to fill a vacancy which occurred through the resignation of Chief Justice Ripley and the con-

sequent promotion of Associate Justice McWilliam to the higher post. His term of office ceased in 1875, and in May of that year he left Minneapolis and established himself both as resident and legal practitioner in St. Paul.

He became associated with Stanford Newel, under the name of Young & Newel; later the firm of Young & Lightner was formed, composed of George B. Young, William H. Lightner and Edward Blake Young, and has had a long and prosperous career.

From his first coming to St. Paul in 1875, until the spring of 1892, Mr. Young was reporter of the supreme court, and twenty-seven volumes of the state reports, i. e., Volumes 21 to 47, inclusive, were compiled by him.

For a number of years Judge Young has been engaged as a lecturer on the conflict of laws in the law school of the University of Minnesota, and has been counsel of the Great Northern Railway Company and other companies.

On September 28, 1870, Mr. Young was married, at Edgartown, Martha's Vineyard, Massachusetts, to Miss Ellen Fellows, only daughter of the late Daniel Fellows, Esq., and a descendant of Gov. Thomas Mayhew, who in 1641 became not only governor, but patentee and proprietor as well, of the islands of Martha's Vineyard, Nantucket and the Elizabeth Isles.

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### CHARLES LUNDY LEWIS.

A position on the supreme bench is one of the highest honors in the power of the commonwealth to bestow. The universal wish of the people, regardless of party, is to have a supreme judiciary made up of men of acknowledged ability and stainless character. It is a serious fault of our judicial system that the bench should be brought into the arena of politics. Though mistakes are sometimes made, yet it is to the credit of the voter that it is the man, not the party, that he looks to in exercising his privilege at the polls. One of the most capable

men on the supreme bench of Minnesota is Charles Lundy Lewis. He is a man of sterling integrity and possesses in high degree those qualities which go to make up the best equipment of a conscientious and able jurist. Judge Lewis was born on a farm (in the house in which his mother still lives), near Ottawa, La Salle county, Illinois, March 8, 1852. His father, Samuel R. Lewis, followed the occupation of farming from boyhood. He always occupied a prominent position in the community in which he lived, filling various positions of trust, and representing his home county in the state senate. He was an active member on the original abolition party and took a prominent part in connection with the well known "underground railway" in the exciting days before the outbreak of the civil war. His political affiliations were always with the republican party. He died at the ripe old age of 83 years, in 1902. His wife, Ann E. Harley, was of Dutch descent, and the daughter of a substantial farmer of central Illinois, who was one of the pioneers of that state. She was born in Pennsylvania, but came with her parents to Illinois when quite young. Self-sacrifice in the interest of others, particularly to her husband and children, has been a dominant characteristic of her life. She has always shown great affection for her family and wonderful perseverance in promoting the welfare of those she loved. Though simple and quiet in her habits of life, she has been a most positive force in the character-building of her children. She is still living at the age of 83 years. Judge Lewis' ancestors on his father's side were Quakers. The original Lewis, known in the family history as Henry II, was of mixed Scotch and Welsh blood, and came from Wales about the time of William Penn and settled in eastern Pennsylvania, near Philadelphia. As a rule the members of the family have all been agriculturists, with the exception of one who was noted in eastern Pennsylvania as a mathematician. The subject of this sketch enjoyed the advantages of a liberal education. He attended the common school of his district until he was sixteen years of age, and then spent two years in the high school at Ottawa, Illinois. He went from there to Chicago, taking a two years' course in the academic department of the Chicago university. He

entered the freshman class of this institution in 1872, and completed the classical course in this and the sophomore class. He completed the course in Oberlin college, graduating in the class of 1876, and taking his share of the prizes in literature, oratory and debates. While in attendance at college, Mr. Lewis came in contact with different phases of religious thought and methods of teaching.

This served as an incentive in his own study and in the development of latent resources within himself. He realized early that the student's natural trend of thought should be given a practical turn in his education, and this no doubt was of great influence in shaping his after career. He did not enjoy, on leaving college, the advantages of a training in a law school, but gained his knowledge of the legal profession by a three years' clerkship in a law office and private reading. He was admitted to the bar in 1879, at Chicago. He came to Minnesota in September of that year, settling at Fergus Falls. He began there the practice of his profession, and succeeded in winning for himself a fairly successful law practice. He was elected county attorney of Otter Tail county in 1884, and was re-elected to the same position in 1886, serving to the end of his second term. Believing that Duluth offered wider opportunities for the successful practice of his profession, he moved there in 1891. In 1893 he was appointed judge of the eleventh judicial district by Gov. Nelson to fill the position provided by the legislature of that year. In the November elections of the year following he was elected to this office for the next ensuing term of six years. In September, 1895, he resigned his judicial office to resume general practice. This was continued until his election as associate justice in November, 1898. Judge Lewis has discharged the duties of his office with great ability and has won the confidence of the people as well as that of members of the legal profession. He is a quiet and unassuming man, reserved in his habits and a lover of home life. His natural inclinations are toward what is more beautiful in life, and in the loving influence of his home he finds the greatest happiness. When in need of recreation nothing gives him more pleasure than to pick up the rod or gun and take a tramp in the woods. Judge Lewis

is a member of the Masonic fraternity. While not a member of any church, he belongs to the liberal class of thinkers along religious lines, and generally attends service where he can have the advantage of listening to the most intelligent discourse from the pulpit. He was married in 1880, to Janet D. Moore, of Minneapolis. They have four children: Laurel, aged 21; Murray, aged 18, students at the State university; Charles L., aged 15, and Margaret, aged 13.

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#### LOREN WARREN COLLINS.

Loren Warren Collins, associate justice of the supreme court of Minnesota, is of New England birth and traces his ancestry back to the early settlers of that period. He was born August 7, 1838, at Lowell, Mass. He attended the common schools and high school, but never enjoyed the advantages of a college education. This did not prevent him, however, from becoming a member of the supreme court after distinguishing himself as one of the leading lawyers of his adopted state. Judge Collins' father was for many years overseer at a cotton factory in Lowell and also at Chicopee, Mass. The family moved from Lowell to Chicopee in 1840, and in 1851 removed to Palmer, Mass. In 1853 the family came to Minnesota, locating on Eden Prairie, Hennepin county, and engaged in farming. Judge Collins had qualified himself for a teacher and his first money was earned teaching a country school near Cannon Falls during the winter of 1850-60. In 1859 he began the study of law under the firm of Smith, Smith & Crosby, at Hastings.

In 1862 Judge Collins enlisted in the Seventh Minnesota Infantry. These were troublous times on the border and in 1863 he served in the campaign against the Sioux Indians. The Indian campaign being concluded, his regiment was sent south in the fall of 1863 and he served with it to the end of the war in the Third Brigade, First Division, Sixteenth Army Corps, and he was mustered out as first lieutenant August 12, 1865. On his return from the war he began the practice of law at St. Cloud in May, 1866. In 1868 he formed a partnership with the

late Chas. D. Kerr which lasted until 1872, when Col. Kerr moved to St. Paul. In 1879 he formed a partnership with Theo. Bruener, which was dissolved in 1881.

Judge Collins has always taken an active interest in politics and has held a number of important public positions. He was a member of the legislature in 1881 and 1883 and judge of the district court from 1883 to 1887, when he was appointed associate justice of the supreme court to succeed Justice Berry. In 1888 he was elected to the supreme bench and held that office until his recent resignation.

While serving in the legislature in 1881 he was chairman of the normal school committee and a member of the judiciary committee. In 1883 he was chairman of the finance committee, chairman of the committee on temperance legislation and at the extra session of 1881 he was one of the board of managers on the part of the house in the impeachment of Judge Cox. He was elected county attorney of Stearns county for several years prior to 1881 and held the office of mayor of St. Cloud from 1876 to 1880.

When elected associate justice of the supreme court in 1888 he ran against Geo. W. Batchelder, a democrat, and his majority was 46,432, the largest received up to that time by any candidate on the state ticket; but in 1894 he increased it to 49,684 over John W. Willis, who was nominated by both the populists and the democrats. This is the greatest majority ever received by any candidate on a state ticket. He resigned his seat on the supreme bench in January, 1904, to become a candidate for the nomination of governor.

Judge Collins is a member of the Masonic order, of the G. A. R., and the Loyal Legion, and is also a member of the Unitarian Church. September 4th, 1878, he was married to Ella M. Stewart, at Berlin, Wis. She died May 31, 1894. Judge Collins' residence is at St. Cloud.

#### THOMAS CANTY.

Thomas Canty, ex-associate justice of the supreme court of Minnesota, and a notable example of a self-made man, is of Irish ancestry



*Thomas Beatty*



and was born in London, April 24, 1854. His parents were Jeremiah and Anna Stanton Cauty.

Thomas came to America with his parents when but two years of age. His father was a laborer and settled first in Detroit, Michigan, then removed to Lodi, Wisconsin, thence to Clayton county, Iowa, and finally purchased a farm near Monona, Iowa, where he died, leaving a widow and seven children. Thomas attended school regularly until he was nine years of age and was a very apt pupil. After that he was only able to attend school a few months each winter. The teachers were generally incompetent, but Thomas was ambitious and pursued his studies with great success and with a preference for mathematics. In the spring of 1869, at the age of fifteen, he passed examination and received a first grade certificate to teach school in Clayton county, Iowa. When he was but thirteen a dispute arose in regard to the rent his father should pay for the farm he occupied, and it was agreed that the farm should be surveyed. Thomas found an error in the surveyor's figures, walked fourteen miles through a snowstorm to the house of the surveyor, had the error corrected, saved his father sixty dollars and prevented a law suit. His mother wanted him to be a blacksmith, but he was determined to be a lawyer. In 1872 he went south in search of a suitable position as teacher, and landed penniless in Carbondale, Illinois, where he worked sixteen hours a day driving a mule used in pulling buckets out of a coal shaft. In this way he earned money enough to take him to Texas. There he taught school for four years, in the meantime applying himself to his studies, and although unable to take a college course he thus acquired substantially the same advancement which a college training would have given him. In the meantime his physical strength had been exhausted, his father had died and he went back to the Iowa farm to regain his health and help his mother take care of the family. It was then that he decided to take up the study of law, and, while he remained on the farm for two years, he devoted all his spare time to the study of his chosen profession. He defeated a graduate of Harvard and another of the University of Wisconsin for a position as principal of the high school, took his

earnings and paid a thousand dollars of his debts which he had contracted while on the farm, owing to a failure of crops, and got an extension of time on the balance. In the spring of 1880 he went to Grand Forks, Dakota, to take up the practice of law, but not satisfied with the outlook, he returned October 1 of the same year to Minneapolis, and entered the law office of Seagrave Smith, and was admitted to the bar the following February. He was so poor that he was obliged to board himself, but his indomitable will carried him through. His first case was a contest over the title of a tract of land near Lake Minnetonka, which had been lost by two prominent attorneys, but he took up a new line of defense and won his case. Another notable series of cases was that of the employes of the contractors engaged in opening Sixth avenue North. In this case he had arrayed against him fourteen able lawyers, but Mr. Canty won every case. He defended the appeals to the district court and again in the supreme court, but he was successful in every instance. At the time of the street car strike in 1889 he won distinction and the popular applause by his successful resistance of the action of the municipal court in sentencing men to the workhouse whom he claims were in no way connected with the strike. He took the men under sentence out of jail on writs of habeas corpus, carried their cases to the district court, argued them before Judge Smith and secured their release.

Judge Canty was a republican until recent years, but the development during Grant's second term cooled his enthusiasm. His first vote was cast for Hayes' electors, but he never approved of the decision of the electoral commission, doubted Hayes' election and was particularly displeased with the action of the commission in refusing to go thoroughly into the evidence. He continued to vote the republican ticket, however, on state and national matters until the passage of the McKinley bill. In local politics he was always independent.

In the fall of 1890 Mr. Canty was nominated by the democratic party for judge of the district court in Hennepin county. He was elected and held that office for three years. On July 14, 1892, he was nominated for associate justice of the supreme court by the people's

party of Minnesota, and was also nominated for the same office by the democratic party on the next third day of August, and was elected. He entered upon the discharge of his duties in that honorable position on January 1, 1894. His record on the district bench was that of a careful, painstaking, able jurist, and after his elevation to the higher office of the supreme bench he sustained himself in that regard and justified the highest expectations of his friends.

Judge Canty is a member of the order of Odd Fellows, is a thirty-second degree Mason and a Shriner.

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### JOHN ABBOTT LOVELY.

John Abbott Lovely, associate justice of the supreme court of Minnesota, and a resident of St. Paul, was born at Burlington, Vermont, in 1843, son of Nobel Lovely and Aurelia Post Lovely.

Judge Lovely was educated at New Hampton institute, Fairfax, Vermont, moved to Milwaukee, Wisconsin, soon after graduation, and there began the study of law under the direction of Edward J. Hill. He was admitted to practice in Milwaukee in 1864, moved to Watertown in that state, and there practiced his profession three years.

In 1867 he came to Minnesota, and located at Albert Lea, where he engaged in general practice and became prominent in his profession throughout Minnesota. The favorable reputation gained in the Twin Cities and throughout the southern part of the state especially, resulted in his nomination and election to the supreme bench in the fall of 1898, and he took his seat in January, 1900.

Judge Lovely has never been special counsel for corporations, but has had a very extensive general practice embracing all lines of professional work in the different courts of the state, and from his first appearance in the supreme court in 1877 he had appeared in over three hundred cases in that court. He has also appeared often in the circuit court of appeals and in the supreme court of the United States, of whose bar he is a member.

Soon after Judge Lovely located at Albert Lea, he began to take prominent rank in his profession, and was elected county attorney of Freeborn county, serving from January, 1869, to January, 1874. In 1877 he was again elected county attorney and served until 1883. From 1866 to 1868 he was city attorney of Albert Lea.

In 1875 the Minnesota State Bar association elected him its president, and he held that position until 1878.

Judge Lovely was married to Helen M. Church, at London, Freeborn county, Minnesota, August 2, 1873, and two children have been born to them: Wirt Lovely, born at Albert Lea, May 30, 1874, and now living at Lisbon, North Dakota; and Ruth Lovely, born at Albert Lea, December 9, 1879, and now the wife of Dr. F. L. Wilcox, of Walker, Minnesota.

Judge Lovely is regarded throughout Minnesota not only as a wise and eminent jurist, but also as a citizen of highest character and usefulness.

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#### DANIEL BUCK.

Judge Daniel Buck, late of the supreme court of Minnesota, was born at Boonville, New York, September 8, 1829. His parents were Jonathan and Roxana (Wheelock) Buck.

Judge Buck was reared to manhood on his father's farm. He was educated in the common schools and at Rome and Lowville academies, New York. After leaving school he studied law, was admitted to the bar, and engaged in the practice of his profession with uniform success from the first. In the spring of 1857, he came to Minnesota, arriving in the then territory, May 15. He pre-empted a homestead near Madelia, in Watonwan county, but the same year located in Blue Earth county. At once he became popular and prominent. The following year he was elected to the legislature, but certain circumstances prevented the assembly of that body in that year and he did not serve. In 1859, when he had been but two years in Minnesota, he was the

democratic candidate for secretary of state on a ticket headed by Gen. George L. Becker for governor, but the republicans won. Upon first coming to Blue Earth county, he opened a law office at South Bend, then a flourishing and promising village at the southern angle of the great bend of the Minnesota river, four miles west of the Mankato. In 1865 he removed to Mankato, where he has since resided. Judge Buck has been the man pre-eminent whom the people of Mankato and Blue Earth county have ever delighted to honor. They have placed him in public positions frequently, and he has always been their faithful servant. Yet he has never been an office seeker or a place hunter, and his preferments have always come to him unsought. In 1865 he was elected to the legislature, and in the session of 1866, while a member of the house of representatives, he secured the enactment of the law locating the state normal school at Mankato.

He was for four years county attorney of Blue Earth county. In 1878 he was elected to the state senate for the full term of four years. He was the author of the insolvent law enacted by the legislature of 1881, and while a state senator, was a member of the court of impeachment on the trial of Judge E. St. Julian Cox. He was city attorney for several years, and for five years was a member of the city school board. He was the first president of the Mankato National bank, and has been vice president and a director of the Citizens' National bank.

As a lawyer he has been prominent and distinguished. Early in his professional career in Minnesota, he was associate counsel for the state in the great legal controversy over the "Five Million Loan Bill," and since has been counsel in a large number of celebrated cases. His legal business has always been large, its success most marked, and its results practical and profitable. His thorough and profound knowledge of the law, his dignified and high-toned conduct as a practitioner, and his abilities as an advocate and "trial lawyer" have won for him the sincerest confidence and admiration of his brethren of the legal profession, while his personal worth has given him the esteem of the general public.

Judge Buck has always been a member of the democratic party. As stated, in 1859 he was his party's candidate for secretary of state; in 1888 he was its candidate for lieutenant governor, but on each occasion was defeated with his ticket. He was a delegate to the national democratic convention at St. Louis, in 1876, which nominated Tilden and Hendricks. In 1892 he was nominated by the democratic and people's parties for judge of supreme court, and was elected by a large majority. His official term was to commence in January, 1894, and to expire in January, 1900; but in October, 1893, he was appointed a member of the court to fill the vacancy occasioned by the resignation of Judge D. A. Dickinson. He served on the supreme bench from October, 1893, until November, 1899, when he resigned.

He was married at Elgin, Illinois, October 25, 1858, to Miss Lovisa A. Wood. Of this union were born three children, viz.: C. Charles Delos Buck, who died while a student in the state university, at Colton, California; Alfred A. Buck and Laura M. Buck, now Mrs. W. L. Abbott, of St. Paul. Mrs. Buck died December 30, 1899.





## CHAPTER XIII.

### THE DISTRICT COURTS AND THEIR JUDGES.

District courts were established under the territorial government of Minnesota and were presided over by the appointed justices of the supreme territorial court. It therefore followed that a case appealed from the district court was brought again under the consideration of the trial judge sitting in his capacity as associate or chief justice. When the state constitution was adopted the organization of the courts was changed. The supreme and district courts were made independent of each other.

The state constitution provided that the state should be divided by legislative enactment into judicial districts, to have one or more judges to be elected for terms of six years. It was further provided that: "The district courts shall have original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds one hundred dollars, and in all criminal cases where the punishment shall exceed three months' imprisonment or a fine of more than one hundred dollars, and shall have such appellate jurisdiction as may be prescribed by law."

The constitution also prescribed that there should be six original judicial districts, made up of counties as follows:

First—Washington, Chisago, Manomin, Anoka, Isanti, Pine, Buchanan, Carlton, St. Louis and Lake.

Second—Ramsey.

Third—Houston, Winona, Fillmore, Olmsted and Wabasha.

Fourth—Hennepin, Carver, Wright, Meeker, Sherburne, Benton, Stearns, Morrison, Crow Wing, Mille Lacs, Itasca, Pembina, Todd and Cass.

Fifth—Dakota, Goodhue, Scott, Rice, Steele, Waseca, Dodge, Mower and Freeborn.

Sixth—Le Sueur, Sibley, Nicollet, Blue Earth, Faribault, McLeod, Renville and Brown.

Many of the counties mentioned have been changed and divided, and twelve new judicial districts have been added to the original six. Instead of six judges, as in 1858, there are now thirty-three.

The judges who have served and are now serving upon the district bench of the state are as follows:

First District—S. J. R. McMillan, May 24, 1858, to July 1, 1864; Charles McClure, August, 1864, to December 31, 1871; F. M. Crosby, January 1, 1872, to January, 1903; William M. McCluer, November 19, 1881, to September, 1890; Hollis R. Murdock, September 24, 1890, to January 14, 1891; W. C. Williston, January, 1891, to January, 1899; still continues in office.

Second District—E. E. Palmer, May 24, 1858, to December 31, 1864; Wescott Wilkin, January 1, 1865, to January, 1891; H. R. Brill, January 1, 1876, to January, 1901; Orlando Simons, January 1, 1876, to November, 1890; L. M. Vilas, February 15, 1889, to August, 1889; William L. Kelly, March 17, 1887, to January, 1901 (re-elected and now serving); C. D. Kerr, February 14, 1889, to January, 1897; Charles E. Otis, August 28, 1889, to January, 1903; James E. Egan, January, 1891, to January, 1897; W. D. Cornish, December 5, 1890, to January, 1893; J. W. Willis, January, 1893, to January, 1899; Olin B. Lewis, January 5, 1897, to January, 1903 (re-elected and now serving); George L. Bunn, January 2, 1897, appointed to fill vacancy upon the death of Judge Kerr, and elected in 1898, now serving; Edwin A. Jaggard, elected in 1902, now serving; and Grier M. Orr, now serving.

Third District—Thomas Wilson, May 24, 1858, to July 1, 1864; Lloyd Barber, September 12, 1864, to December 31, 1871; C. N. Waterman, January 1, 1872, to February 18, 1873; John Van Dyke, February 28, 1873, to January 8, 1874; William Mitchell, January 8, 1874, to March 14, 1881; Charles M. Start, March 14, 1881, to Janu-

ary, 1895; O. B. Gould, 1895 to January, 1897; A. H. Snow, January 5, 1897, to January, 1903 (re-elected in 1902).

Fourth District—James Hall, May 24, 1858, to October, 1858; Edward O. Hamlin, October 1, 1858, to December 31, 1858; Charles E. Vanderburgh, January 1, 1859, to January 1, 1882; A. H. Young, January, 1877, to January, 1891; John M. Shaw, January 13, 1882, to January 8, 1884; M. B. Koon, January 8, 1884, to May 1, 1886; John P. Rea, May 1, 1886, to March 5, 1889; William Lochren, November 19, 1881, to May, 1893; Henry G. Hicks, March 16, 1887, to January, 1895; Frederick Hooker, March 5, 1889, to 1894; Seagrave Smith, March 5, 1889, to January, 1903; C. M. Pond, January 5, 1891, to January, 1897; Thomas Canty, January 5, 1891, to January, 1894; Robert Jamison, January, 1894, to December 1, 1897; Robert D. Russell, May, 1893, to October 20, 1897; Henry C. Belden, January, 1895, to May 5, 1897; Charles B. Elliott, January, 1894, to January, 1901 (re-elected and now serving); David F. Simpson, January 5, 1897, to January, 1903 (re-elected and now serving); Edward M. Johnson, May 5, 1897, to January, 1901; John F. McGee, October 20, 1897, to January, 1901 (re-elected and now serving); William A. Lancaster, December 1, 1897, to January, 1901; Alexander M. Harrison, now serving; Frank C. Brooks, now serving; Charles M. Pond, serving since 1891.

Fifth District—N. M. Donaldson, May 24, 1858, to December 31, 1871; Samuel Lord, January 1, 1872, to February 21, 1880; Thomas H. Buckham, February 21, 1880, to January, 1889 (still serving).

Sixth District—James M. McKelvey, May 24, 1858, to December 31, 1864; Horace Austin, January 1, 1865, to September 30, 1869; M. G. Hanscome, October 1, 1869, to December 31, 1869; Franklin H. White, January 1, 1870, to October 1, 1874; A. C. Woolfolk, October 1, 1874, to December 31, 1874; D. A. Dickinson, January 1, 1875, to June 27, 1881; M. J. Severance, June 27, 1881, to January, 1900; Louis Cray, term began January, 1900.

Seventh District—James M. McKelvey, August 1, 1866, to April, 19, 1883; L. W. Collins, April 19, 1883, to November 16, 1887; L.

L. Baxter, March 18, 1885, to January, 1899; D. B. Searle, November 14, 1887, to January, 1901. Judges Baxter and Searle re-elected and now serving.

Eighth District—L. M. Brown, March 11, 1870, to December 31, 1870; A. G. Chatfield, January 1, 1871, to October 3, 1875; L. M. Brown, October 29, 1875, to January 3, 1877; J. L. McDonald, January 3, 1877, to November 4, 1886; James C. Edson, November 4, 1886, to January 27, 1891; Francis Cadwell, February, 1891, to January, 1899, appointed to succeed James C. Edson, deceased; elected and now serving.

Ninth District—M. G. Hascome, March 11, 1870, to January 1, 1877; E. St. Julian Cox, January 1, 1877, to March 22, 1882; H. D. Baldwin, April 4, 1882, to January 3, 1883; B. F. Webber, January 3, 1883, to January, 1901; re-elected and now serving.

Tenth District—Sherman Page, January 1, 1873, to January 10, 1880; John Q. Farmer, January 10, 1880, to January, 1893; John Whytock, January, 1893, to January, 1899; Nathaniel Kingsley, appointed to fill vacancy caused by death of Judge Whytock, and elected in 1900.

Eleventh District—O. P. Stearns, January, 1875, to January, 1894; R. Reynolds, March 19, 1885, to January 4, 1887; Ira B. Mills, January 4, 1887, to March 8, 1887; J. D. Ensign, April 16, 1889, to January, 1903, re-elected and now serving; Samuel H. Moer, January, 1894, to January, 1900; Charles L. Lewis, March 14, 1893, to September 1, 1895; Page Morris, September 2, 1895, to September 1, 1896; W. A. Cant, January 5, 1897, to January, 1903, re-elected in 1902; Homer B. Dibell, elected in 1899, still serving.

Twelfth District—John H. Brown, March 13, 1875, to January, 1890; Gorham Powers, January 31, 1890, to January, 1903 (re-elected and now serving); G. E. Qvale, 1897 to the present time.

Thirteenth District—A. D. Perkins, March 17, 1885, to March 1, 1891; P. E. Brown, February, 1891, to January, 1899 (re-elected and now serving).

Fourteenth District—Ira B. Mills, March 8, 1887, to January, 1893; Frank Ives, January, 1893, to January, 1899; William Watts, now serving; Andrew Grindland, now serving.

Fifteenth District—C. B. Sleeper, March 10, 1887, to January 5, 1899; George W. Holland, January 5, 1889, to January, 1901; William S. McClenahan, now serving; Marshall A. Spooner, appointed in March, 1903.

Sixteenth District—Calvin L. Brown, March 10, 1887, to January, 1901; Stephen A. Flaherty, now serving.

Seventeenth District—James H. Quinn, March 12, 1897, to the present time.

Eighteenth District—James C. Tarbox, May 4, 1897, to 1903; Arthur E. Giddings, now serving.

### ORLANDO SIMONS.

Orlando Simons, deceased, a pioneer lawyer and judicial officer of Minnesota, and who for fifteen years was a judge of the Ramsey county district court and died in service, was born at Horseheads, New York, January 15, 1825. He was educated in the schools of his native village and at Elmira, New York. He was admitted to the bar at Port Jarvis, New York, and formed a partnership with Henry F. Masterson.

Judge Simons and Mr. Masterson came together to St. Paul in June, 1849. On their arrival they found that house carpenters were more in demand than lawyers, and as both were workers in wood, and good at their trade, they sought employment in their old-time vocations. Simons went to work as a carpenter and Masterson entered a sawmill at St. Anthony Falls.

They subsequently formed a law partnership at St. Paul, which existed for more than twenty-five years. This partnership was, however, substantially a continuation of one formed by the two friends some years before at Port Jarvis, New York.

In November, 1849, at a special election, Judge Simons was elected the first justice of the peace of St. Paul after the organization of the town. In 1854, under the city organization, he was again elected the first magistrate. In 1875 he was appointed associate judge of the common pleas court of Ramsey county, and in March of that year he was elected to the district bench, and by successive re-elections served fifteen years. He died in office November 10, 1890.

When he was in service on the bench a former biographer, the late Maj. T. M. Newson, thus wrote of his official character:

"Judge Simons acts promptly, decides promptly, moves promptly, and talks promptly. He possesses a good judicial mind and is fearless in the discharge of his duty. He gets down to the bottom of every question, and his decisions are very generally acquiesced in. When a city justice he made the fur fly, but now as a judge he is cool, dignified and courteous. He lives within himself, has no faculty of making money, and mixes but little in society."

Judge Simons was married in St. Paul, February 18, 1852, to Julia A. Fulwider, and had a family of thirteen children, eleven of whom are now living. He was a member of the Presbyterian church and a democrat in politics.

#### WILLIAM LOUIS KELLY.

Judge William Louis Kelly has been a prominent resident of St. Paul, Minnesota, for a period of nearly forty years, but is of southern birth and comes from Springfield, Washington county, Kentucky, where he was born August 27, 1837. His parents were Col. Charles C. and Anne (Bourne) Kelly, prominent citizens of that locality. Young Kelly mastered a good sound English and classical education at home and in the country schools which he attended during his boyhood. He then entered the office of his father, a successful practicing attorney, and delved deeply into the mysteries of the law with such good results that he was admitted to the bar of his native state in 1859. To still further perfect himself for his work, he entered the

University of Louisville, graduating from the law department in 1859, and in 1871 was admitted to the Minnesota bar. He has lived in this state since 1865, has appeared before all the courts and given his clients fair and conscientious treatment.

Perhaps this fact may have something to do with his widespread popularity, for it is true that few men enjoy the esteem of their fellow men to a greater extent than does Judge Kelly. When a vacancy occurred in the judgeship of the second judicial district of Ramsey county, he was appointed to the position by the Hon. A. R. McGill, and qualified for the office March 17, 1887. He was elected by the voice of the people to succeed himself in 1888, in 1894, and still again in 1900, being the popular nominee of both the republican and democratic parties. He brought to this office the same dignity of bearing and high motives which had characterized his previous life, and his rulings have been most just and his decisions unbiased. Benevolent by nature, he has endeavored to reclaim the sinner who is but starting on his career of vice, but the hardened criminal is made to pay the penalty of his misdeeds.

Judge Kelly was special agent of the postoffice department during the civil war, and, as such, had charge of all the mail service in the Mississippi division. He also served under General Sherman in the Atlanta campaign when that intrepid leader made his famous march to the sea. His term of service as special agent of the postoffice extended from 1864 to 1867, and previous to that time he was assistant postmaster at Louisville, Kentucky, from 1855 to 1864. He was married in his native state to Miss Rosa Warren, and of the family born to them four, a son and three daughters, are living. Judge Kelly is a devout Catholic.

#### HASCAL R. BRILL.

Hascal R. Brill, judge of the district court of the second judicial district (Ramsey county), was born at Philipsburg, in the Province of Quebec, Canada, in 1846. In 1859 his father, Thomas R. Brill,

came with his family to Minnesota and engaged in farming in Goodhue county, and Judge Brill has ever since been a resident of this state. His education was begun in the common school and completed at Hamline university (then located at Red Wing), and a year's course at the University of Michigan. At intervals he was a school teacher until in December, 1867, when he came to St. Paul and began the study of law under Judge E. C. Palmer. For a year he was a clerk in the office of Morris Lamphrey, continuing his studies.

Judge Brill was admitted to the bar in St. Paul, December 31, 1869, and for three years thereafter was engaged in the practice in partnership with Hon. Stanford Newel, later United States minister at The Hague. In the brief time mentioned he rose well up in his profession, and in 1872, when but twenty-six years of age, he was elected probate judge of Ramsey county and served for two years, retiring in January, 1875. In March following he was appointed judge of the Ramsey county court of common pleas, to fill the vacancy caused by the death of Hon. Wm. Sprigg Hall. The following year, 1876, the court of common pleas was merged into the district court, where he became a district judge, and at the first election thereafter he was elected to succeed himself. By repeated re-elections, nearly always without opposition, he has held the position ever since.

Of Judge Brill, on the bench, it may be said that he is somewhat quiet and reserved, though always courteous and considerate, patient in the study of the issues, but quick to decide and firm in his decision, seldom reversing himself and seldom being reversed; liberal and generous towards counsel, but swift and stern in rebuking trickery and sharp practice and always fearless and impartial.

Judge Brill was married in 1873 to Miss Cora A. Gray, and they have six children. The judge is a member of the Methodist Episcopal church, and is a member of the Odd Fellows.

#### CHAS. D. KERR.

Hon. Chas. D. Kerr, deceased, who served on the Ramsey county bench for several years, was born in Philadelphia, Pennsylvania, Sep-

tember 9, 1835. At an early age his parents removed to Jacksonville, Illinois, where he was educated under circumstances very discouraging to one of his tender years; and his success in fitting himself for a higher education preparatory to becoming a lawyer was due to his own efforts and exertions. In 1857 he was graduated from the Illinois college at Jacksonville, having taken a full classical course. Two years later he entered the law office of Hon. Samuel F. Miller (later one of the justices of the supreme court of the United States), at Keokuk, Iowa, where he devoted his undivided time to the study of his chosen profession, and was admitted to the bar in 1861.

April 20, 1861, Mr. Kerr was mustered into service as a private of Company D, Sixteenth Regiment, Illinois Volunteer Infantry, and the following September he was commissioned adjutant of the regiment and finally reached the position of lieutenant colonel, with which rank he was mustered out of service July 27, 1865, after service of four years and three months, nearly all of which was spent in active service.

In September, 1867, Colonel Kerr came to Minnesota, and first settled in St. Cloud, where he resumed the practice of law in partnership with Hon. James McKelvey, who afterwards served for sixteen years as judge of the seventh judicial district. After Judge McKelvey went on the bench Colonel Kerr was in partnership with Hon. W. S. Moore, and later with Hon. L. W. Collins, associate justice of the supreme court, until he removed to St. Paul, which was in 1873, and where he built up a large clientage until he was elevated to the bench. He was of a judicial turn of mind and brought to the trial of a case all the law there was on the subject, and was also an earnest, forceful speaker, unaffected and plain in manner. In February, 1888, he was unanimously endorsed by the Ramsey County Bar Association for appointment as one of the two additional judges for Ramsey county and the second judicial district, which had been recently authorized by the legislature. The endorsement was unsolicited, but was in its nature a most exalted compliment to the worth of the recipient, and as such was duly appreciated. On the fourteenth of that month the

appointment was confirmed by Governor Merriam, and at the same time Hon. L. M. Vilas was commissioned as the other judge of the district. Judge Kerr's elevation was greeted with great satisfaction by his brethren at the bar, by the press of the city and by all classes generally.

Judge Kerr took a deep and active interest in municipal affairs, and was influential in shaping them. He served two terms as alderman from his ward, and one term as president of the common council of the city. He was also for two terms a member of the board of education and for one term president of the board. He was also a member of the State Bar Association, and belonged to Acker Post, G. A. R., and to the Loyal Legion; of the last named organization he was senior vice commander of the department for the year 1888.

Judge Kerr married Miss Mary E. Bennett, of Rochester, New York. Surviving this union are three children, Mrs. Lewis J. Hillhouse and Harold C. Kerr, of St. Paul, and Charles D. Kerr, of Little Falls, Minnesota.

Upon the death of Judge Kerr, which occurred in 1896, the Ramsey County Bar Association and State Bar Association passed resolutions appreciative of his high character as a citizen, a lawyer and a judge.

#### AUSTIN H. YOUNG.

Austin H. Young, of the Minneapolis bar, was born in Fredonia, Chautauqua county, New York, December 8, 1830. His parents, Abijah and Rachel (Hill) Young, were natives of Vermont. Abijah Young died in 1837, when Austin H. was but six years of age. After the death of Mr. Young his widow moved to Dupage county, Illinois, and two years later, after her second marriage, the family removed to Cook county and located on a farm. Here Austin H. Young received a common school education, attending school in winter and working on the farm in summer. When but seventeen years of age he entered Wankegan academy, Wankegan, Illinois, one of the most famous institutions of learning in the west in those days. However, he did

not graduate, but after taking a course he began teaching district schools in Illinois, and followed that occupation for about six years. At the age of twenty-three he decided upon the law as a profession best adapted to his taste, and in 1853 he entered the office of Ferry & Clark, of Waukegan, where he remained for about one year, applying his time to the study of law, when he removed to Prescott, Wisconsin, and engaged in mercantile pursuits for some time. Here he was elected to the office of clerk of the circuit court, and held that office for several years, when in 1860 he began the practice of law, in partnership with M. H. Fitch. Soon after he was elected district attorney, which office he held until the fall of 1863, when he was elected to the state senate.

In 1866 Mr. Young came to Minnesota and located in Minneapolis, forming a partnership with W. D. Webb, under the firm name of Young & Webb. This firm existed until 1870, when he and Thomas Lowry became associated under the firm name of Young & Lowry, and continued until 1872, when Mr. Young was appointed judge of the court of common pleas. This court had recently been established by the legislature, and in November of the same year Judge Young was elected for a term of five years. In 1877 the legislature united the district court and the court of common pleas, and he was transferred to the district bench, and was continued in that office for about eighteen years, or until 1890, when he resumed the practice, forming a partnership with Hon. Frank M. Nye, which was later dissolved, and Judge Young became associated with Hon. Daniel Fish, under the firm name of Young & Fish.

The continuance of Judge Young on the bench for such a long period was sufficient evidence of his ability, integrity and fidelity to his official duties.

Judge Young not only enjoys the confidence and esteem of the legal profession of the state, but the public in general, who are familiar with his professional and private life and high character as a citizen. Judge Young is a republican, though he has never taken an active part in political matters, owing principally to his official position. He

is a member of Plymouth Congregational church, and is also an officer of that society.

### HOLLIS R. MURDOCK.

Judge Hollis R. Murdock, deceased. Few men are more kindly remembered or held in more affectionate remembrance than Judge Murdock, who, for almost half a century, was one of the most influential and public spirited citizens of Washington county, Minnesota, and as an advocate and jurist was deemed second to none in the state. Hollis R. Murdock was born August 15, 1832, in Gouverneur, St. Lawrence county, New York, and received his education in the east, graduating from Williams college, Massachusetts, in 1854.

In 1855 Judge Murdock came to Minnesota and located in Stillwater, where he studied law and was admitted to the bar January 14, 1856. So able was he in his profession that he was elected judge of the probate court three years later, in 1859, and was re-elected three consecutive times; it being the general consensus of opinion that Washington county has never had a better probate judge. He was ever on the alert to see and work for the best interests of the community in which he lived, his sympathetic nature making him keenly alive to the needs of his fellow men. While his legal business was carefully looked after in a manner that swelled it to magnificent proportions, yet he found time to devote to the public good, and was one of the incorporators of the Stillwater and St. Paul Railway Company in 1867. Of this organization, which has since been merged in the St. Paul and Duluth, he was secretary and director until his death. In 1871 he represented Stillwater district in the legislative halls of Minnesota, but refused the honor a second time, although repeatedly urged to serve again. For a period of almost twenty years he was one of the directors of the First National Bank of Stillwater. Later, in 1885, he was elected mayor of the city, but political life did not appeal to his pure nature, and he turned aside from that path at once and forever.

As a lawyer he was courteous and kind, possessing a strong, clear mind and a power of oratory at once scholarly and captivating. To the beginner at the bar he was ever ready to lend assistance, and many who have since achieved a high place in the fraternity cherish a grateful memory of such service rendered in time of need. After the death of Judge McCluer, in 1890, Governor Merriam tendered the judgeship to Judge Murdock, who declined because he felt that a younger man should be chosen, and it was only when he saw that it was the general wish that he consented, reluctantly, to accept the office, the bar of the county having passed a resolution recommending his appointment. The following November he was elected to the office for a term of six years with practically no opposition. With a clear mind, with decision and energy, he acquitted himself with a dignity and impartiality on the bench that won him the respect and esteem of all. He had been in continuous practice longer than any lawyer in the city of Stillwater.

Judge Murdock was united in marriage in November, 1857, to Miss Sarah Rice, who survives him and is still a resident of Stillwater. Two children were adopted into the home, where they were cared for and reared to lives of usefulness and honor. These also survive him, and are Robert Murdock, who resides near Milbank, South Dakota, and Miss Alice Murdock. In social life, as in his profession, Judge Murdock was held in the highest esteem, his well known fidelity to right, firmness to principle, honesty and tenacity of purpose, united to his kindness and forbearance towards others, his enduring patience, modesty and gentleness of disposition, making him a man of truly great character. Learned in his own language, he was also versed in German, French, Spanish, Greek and Latin, and could read, write and speak them with fluency. He traveled extensively, having been over much of the United States, and visited Europe, Mexico and Central America; his last journey being to California. While apparently in the full vigor of life he was suddenly stricken with cerebral hemorrhage, which baffled the most loving and skillful treatment, and on January 14, 1891, after a brief but painful

struggle, his spirit answered the silver trumpet which sounded his recall. The news of his death was received with widespread sorrow and a sense of personal loss, not only to the residents of Stillwater, but to the hundreds who had known and admired him throughout the state. Judge Murdock was one who stood upon the heights of life. Such lives are not counted in great numbers, and the world is the richer for his having lived. He was president of the Washington county bar at the time of his demise, trustee of St. John's Lodge, A. F. & A. M., and an honorary member of Company K, N. G. S. M.

#### DAVID FERGUSON SIMPSON.

Hon. David Ferguson Simpson, judge of the fourth judicial district, is of Scotch descent, both his parents being born in Scotland. He takes a pride in his Scotch ancestry, as is shown by his active membership in the Caledonia club and his election to the office of chief of that organization. His father, William Simpson, was a well-to-do farmer near Waupun, Wisconsin, where the subject of this sketch was born, June 13, 1860. Mr. Simpson's education began in the country school near his father's farm and in the village school of his nativity, which was supplemented with a two years' preparatory course for college at Ripon, Wisconsin, followed by a four years' academic course in the Wisconsin State University, from which he graduated in 1882. He was given special honors in the department of history, and awarded the Lewis prize for the best commencement oration. He had maintained a high grade of scholarship through his course, and was appointed to fill the position of professor of rhetoric during the absence of the regular occupant of that chair in the university during the college year of 1882-3. He had decided to become a lawyer, and with that object in view took the law course at the University of Wisconsin and the Columbia law school in New York, receiving the degree of LL. B. from each of these schools in 1884. The same year he was admitted to the bar in the state of Wisconsin, but came almost immediately afterwards to Minneapolis and began the practice of

law. He was appointed assistant city attorney of Minneapolis in 1891, was elected to the office of city attorney in 1893, and re-elected in 1895. Mr. Simpson is a republican and takes an active interest in local and national politics. He has made a special study of municipal government, and assisted in drafting a general municipal law, which was adopted by the charter commission, sitting concurrently with the legislature in 1893. At the session of the Municipal Reform League in Minneapolis in 1894, he was invited to be present and outline the system of municipal government in operation in Minneapolis, and prepared a paper which was received with a great deal of interest by that body as an able argument in favor of what is known as the council system of the city government, of which he is an advocate. Judge Simpson's conduct of the legal department of the city of Minneapolis was characterized by distinguished ability, which was, on more than one occasion, operated to the great advantage of the city. Notable among the acts of his administration was his successful prosecution of the city's case before the special commission appointed to consider the demands of the city for reduction in the price of gas. This case was stubbornly contested by able legal counsel on the opposite side, but Judge Simpson's presentation of the case was so strongly made that it resulted in the reduction of the price of gas to all consumers from \$1.60 to \$1.30 net.

In 1896 Judge Simpson was elected as a judge of the fourth judicial district, and was re-elected upon the expiration of the term.

January 14, 1886, he was united in marriage to Josephine Sarles, a graduate of the University of Wisconsin in the class of 1883. Mrs. Simpson took the first honors of her class, and is active in the literary and benevolent societies of Minneapolis.

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#### THOMAS SCOTT BUCKHAM.

Thomas Scott Buckham, LL.D., for over twenty years judge of the fifth judicial district, was born in Chelsea, Oregon county, Vermont, January 7, 1837. He is the son of Rev. James and Margaret (Barnby)

Buckham. His father, a native of Kelso, Scotland, was educated to the ministry in the old Calvinistic school. He lived and preached in England for several years; came to America in 1836, and settled in Chelsea, Vermont. He later removed to Burlington, Vermont, where he continued to preach until he was seventy-five years of age. He was a fine classical scholar, a man of strong mind and a true Christian. He died in Burlington in 1885, at the good old age of ninety-four years. His wife, Margaret Barmby, was a native of Hull, Yorkshire county, England. She died in Burlington, Vermont, at the age of seventy-six. They were the parents of ten children, of whom three sons and one daughter are yet living. One of the sons has been for twenty-five years president of the University of Vermont, at Burlington. Another son is principal of the state normal school at Monmouth, Oregon, which position he has occupied for the last five years. Previous to that time he was for many years president of the state normal school at Buffalo, New York. The daughter is Mrs. Martha B. Benedict, wife of B. L. Benedict, clerk of the United States district court and circuit court for the eastern district of New York, residing in Brooklyn. The other son is the subject of this sketch. Thomas Scott Buckham received his preparatory education from his father and entered the University of Vermont, where he graduated from the classical course in 1855. Since then the university has conferred on him the degree of LL. D. After graduation he taught Latin and Greek for one year in the seminary at Mexico, Oswego county, New York. In the summer of 1856 he came to Minnesota and settled in Faribault, where he has ever since resided. He had read law while in college and while teaching. As soon as he was settled in Faribault he was admitted to the bar of all the courts. He first began practice with George W. Batchelder; the partnership continuing until he was appointed to the bench in 1880 by Gov. John S. Pillsbury, as judge of the fifth judicial district, which office he has continued to hold by re-election without opposition until the present time. He is now serving his fourth term. Before he was appointed to the bench he served as county attorney for two years, and was county superin-

tendent of schools for six years. He was also mayor of Faribault for one term, and was for twelve years on the board of regents of the state university. He, as state senator in 1873-74, was chairman of the judiciary committee both terms, and a member of the railroad committee. It was he who drew up the first bill that became law for the regulation of the railroads in Minnesota. Judge Buckham was married in Brooklyn, New York, November 25, 1866, to Anna M. Mallary, a native of New York. Mr. and Mrs. Buckham attend the Congregational church, of which Mrs. Buckham is a member. They have no children.

#### EDWIN JAGGARD.

Judge Edwin Jaggard, of the district court of the second judicial district, and an honored resident of St. Paul, Minnesota, is a native of Altoona, Blair county, Pennsylvania, and was born to Clement and Anna (Wright) Jaggard on February 21, 1859. From Dickenson college at Carlisle, Pennsylvania, he received the degree of Master of Arts and from the University of Pennsylvania the degree of Bachelor of Laws. He was still further equipped for his profession by practical training in the office of S. S. Blair, of Hollidaysburg, Blair county, Edward Coppee Mitchell, of Philadelphia, and Young & Lightner, of St. Paul.

Judge Jaggard was admitted to the bar of his native state in 1882 and the year following to the bar of Minnesota, where he has since been engaged in practice and has been eminently successful. With a mind of rare analytical power, his judgment as a lawyer is discriminating and sound, and he is highly esteemed by members of the bar and those who have come in contact with his strong, rugged nature. In 1898 he was elected judge of the district court from the second judicial district for a term of six years, and it is here that the purity of his convictions and the utter impartiality of his decisions have forced the admiration and respect of even those who were his political opponents. His opinions in the judicial chair have been above

reproach and are the result of careful consideration and due deliberation, and the fact that he has the courage of his convictions makes him one of the most popular judges on the bench. Added to a wide fund of information, tact and fine conversational powers combine to make the judge a most agreeable and entertaining companion in private life, and he is constantly strengthening the already strong hold he has on the people.

In 1885 he was lecturer on medical jurisprudence before the St. Paul Medical College, and in 1900 was given honorary fellowship by the American Academical Railway Surgeons. He was professor of law of torts and taxation in the law department of the University of Minnesota, and is an authority of more than local fame, as is evidenced by the sale of his books, viz.: Jaggard on Minnesota Taxation; Jaggard on Iowa Taxation, and two volumes of Jaggard on Torts. Judge Jaggard was married in 1882 to Miss Anna May Averell, of St. Paul. They have no children.

### JOHN FRANKLIN McGEE.

Hon. John Franklin McGee, late of the district bench of Minneapolis, is of Irish descent. His father, Hugh McGee, emigrated to this country from the north of Ireland in 1850, while yet a lad of fifteen. He settled at Amboy, Illinois, and engaged in the railroad business as a mechanic, and retired in comfortable circumstances. John Franklin was born at Amboy January 1, 1861, and attended the city schools, graduating from the high school in his twentieth year. During his last year at the high school he read law with C. H. Wooster, of Amboy. From there he went to Clinton, Illinois, and entered the office of Moore & Warner. The senior member of this firm was partner with the late United States Senator David Davis, of Illinois, for many years. Mr. McGee was admitted to practice in the supreme court of Illinois November 10, 1882, and he came west the following April and settled at Devils Lake, Dakota territory, going into partnership with D. E. Morgan, later district judge at Devils Lake. Mr. McGee

assisted Mr. Morgan, who was prosecuting attorney at that time, trying all the important criminal cases from the organization of the county until leaving for Minneapolis. The most important case Mr. McGee tried while at Devils Lake was the sensational Oswald murder case, in the spring of 1886. The following spring he removed to Minneapolis and formed a partnership with A. H. Noyes, which partnership was continued until August 19, 1889. His specialty, in the latter part of his practice, was corporation law. He was the representative of the old Chicago, St. Paul & Kansas City Railroad, and represented its successor, the Chicago Great Western, in the same capacity. After settling in Minneapolis, one of his most important cases, and one which became of national interest, was that of Norman Brass vs. North Dakota, a suit brought to overthrow the grain laws of that state. When this case was finally appealed to the supreme court of the United States the law was upheld by a vote of five to four. Judge McGee has never been very active in politics, but is an independent republican in belief.

Judge McGee was appointed to the bench October 20, 1897, by Governor Clough to fill out the unexpired term of the late Judge Russell, and in 1898 he was re-elected to the office for a term of six years, and polled the largest vote of any man on the judicial ticket at that election. In November, 1902, he resigned from the bench to re-engage in the practice, forming a partnership with Judge W. A. Lancaster, under the firm name of Lancaster & McGee.

Judge McGee was married September 14, 1884, to Libbie L. Ryan, of Wapella, Illinois.

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#### WILLIAM C. WILLSTON.

William C. Willston, of Red Wing, Minnesota, is a native of South Carolina, born at Cheraw, in the county of Chesterfield, June 22, 1830. His parents were William King and Annis (Chapman) Willston, his father being a merchant at Cheraw. The financial circumstances of the family were moderate, yet William C. was enabled to obtain a sub-

stantial common school education. He read law in Chardon, Geauga county, Ohio, and in 1854 was admitted to the bar of that state. He practiced law for about two years in Ohio, then removed to Iowa, where he remained for a few months. In 1857 he removed to Red Wing, and soon became established in his profession; and that city has been his home continuously up to the present time. During the civil war, however, he was absent on military duty much of the time for two years. He enlisted in 1862 as a private in Company G of the Seventh Minnesota Infantry Volunteers, and was discharged from the service in 1864 with the rank of captain.

Judge Willston has been a member of two law partnerships, the first of which was formed in 1850, when he became associated with Hon. E. T. Wilder, of Red Wing. This firm was succeeded by another, in which Hon. O. M. Hall was the junior partner.

During his professional career Judge Willston has filled with efficiency the offices of both city and county attorney; and has been a member of the bench of Minnesota since 1891, in which year he was appointed judge of the district court. He was elected in the following year, and again in 1898, and to-day enjoys the reputation of being a peer of the foremost judges of the state. As an all around business lawyer, also, he ranks among the leaders of the bar of Minnesota, his success being attributable jointly to superior ability and an unusual capacity for thorough and continuous work. In politics the judge is a democrat, but conservative in this as in all other departments of life. He is, however, a man of strong convictions and a deep reverence for justice, and the force of his character has been recognized and appreciated in public, as well as private, life. Judge Willston has served four years in the state legislature, having been a member of the house of representatives in 1873-4, and a senator during the years 1876-7. Judge Willston has advanced far in Masonry, having at one time been grand commander of the Knights Templar of Minnesota. As an Odd Fellow, also, he has held the position of grand master and grand representative of that order in Minnesota. In religious faith he is an Episcopalian, being a communicant of the church.





*L. L. Baxter,*

On April 12, 1854, Judge Willston was married to Mary Eliza Canfield, of Chardon, Ohio. Four children were born to them, two boys and two girls. The sons both died in infancy; the daughters are: Mrs. John H. Rich and Mrs. L. G. Phelps, both of whom are residents of Red Wing.

### COL. LUTHER LOREN BAXTER.

Luther L. Baxter, of Fergus Falls, Minnesota, son of Chamcey and Philena (Peet) Baxter, was born in Cornwall, Vermont, June 8, 1832. He received his education at the district schools of his native town, supplemented by private tuition, a year at Castleton seminary, and a two years' course at Norwich university. Commencing the study of law at nineteen years of age under Lindsley & Beckwith, and concluding his studies with Judge Horatio Seymour, he removed to Illinois in the fall of 1853, and was there admitted to the bar in March, 1854. Locating at Geneva, Wisconsin, he practiced his profession successfully until 1857, when he removed to Carver county, Minnesota, and resumed the practice of his profession, which he continued, except during his enlistment, until 1885; from 1876 to 1882 at Minneapolis, and since 1882 at Fergus Falls, where he still resides.

Judge Baxter enlisted in 1861, as captain of Company A, Fourth Minnesota Volunteer Infantry, and was assigned with two companies to the command of Fort Ridgely; remaining there until March, 1862, he rejoined his regiment at Fort Snelling, and was promoted to the rank of major. In April, 1862, he was ordered south with his regiment, where he participated in all of the campaigns in which his regiment took part until, owing to sickness, he was compelled to resign in October, 1862. Re-entering the service in November, 1864, as major of the First Minnesota Heavy Artillery, he was promoted to the rank of lieutenant-colonel in February, 1865, and commissioned colonel the same year, and participated in the battle of Nashville. He was elected to the state senate in the fall election of 1864, and was granted leave of absence to take his seat in that body at its session

commencing in January, 1865. Returning to the army in March, 1865, he was assigned to duty as chief of artillery at Chattanooga, remaining there with his regiment until mustered out of service in October, 1865.

Judge Baxter is a democrat, and as such has held many positions of honor and trust; was judge of probate for Carver county in 1858; prosecuting attorney for the fourth judicial district, 1859; county attorney of Scott county, 1863; senator from Scott county, 1865-69; member of the house from Carver county, 1869; senator from 1869 to 1876; county attorney of Carver county, 1877-79, and member of the legislature, 1879-81. At the hands of the republican governor, Hubbard, he received the appointment of judge of the seventh judicial district in March, 1885, to fill an unexpired term, and was elected to the same position for a term of six years at the elections of 1886, notwithstanding the fact that the district cast a republican majority of 3,500. He was re-elected at the elections of 1892 and 1898 without opposition, and still holds the position.

#### REUBEN REYNOLDS.

The late Reuben Reynolds, of Crookston, was a native of New York state, born at Covington, Genessee county, April 25, 1821. He was educated in the Empire state and prepared for the ministry, being ordained in the Methodist Episcopal faith.

His residence in Minnesota dates from 1855, in which year he came to the state and located at Rochester, having meantime relinquished the clerical in favor of the legal profession. He resided in Rochester for fifteen years, during which time he served one term as clerk of the district court and two terms as judge of the probate court of Olmsted county. During the civil war he also held a public office connected with that of the provost marshal. In 1870 he came to northern Minnesota, locating at Alexandria, where he became associated in practice with Hon. Knute Nelson. In 1872 he took up his residence in Detroit, Becker county, having previously, and after leav-



*R. Reynolds.*



ing Alexandria, lived for a short time in Otter Tail county. In Detroit, where he remained for four years, he filled the post of receiver in the local United States land office. From Detroit he removed to Minneapolis, where he practiced his profession as one of the members of a law partnership, doing duty, also, as special judge of the municipal court. In 1879, having received from Judge Stearns the appointment of clerk of the court for Polk county, he settled in Crookston, where he resided continuously for the remainder of his life. In connection with William M. Watts, Esq., Judge Reynolds practiced his profession for years at Crookston, participating, it is said, in the trial of the first case ever decided by a district court in the county. As soon as an associate judge was permitted for the district he was appointed to that office, in which he was still serving when attacked by a painful disorder which eventually ended his life March 8, 1889. Always a loyal republican, Judge Reynolds was a zealous and efficient campaigner during the many years of his residence in Minnesota. At the time of the Ku-Klux "reign of terror" in Arkansas the judge, undaunted, pursued his stump work for General Grant, even into the most perilous localities. He possessed the gift of ready speech, his style being simple and direct, but forceful and most convincing. To his tireless efforts Hon. Knute Nelson, United States senator from Minnesota, was largely indebted for his first election to congress; Judge Reynolds being, in his case, actuated less by party sentiment than a sincere regard for the character of the man. In behalf of early settlers in Polk county, Judge Reynolds labored disinterestedly in the matter of land indemnity; and to the cause of temperance, always and everywhere, he was a consecrated devotee. Judge Reynolds was eminently adapted to the judicial function by the very order of his mentality, which was far-seeing, cautious and discriminating. He was an excellent judge, but he was more; he was a man of high ideals and earnest and true convictions. He lived upon a high plane, toiling for the good of the state and nation and humanity. In the year 1844, at La Monte, Michigan, Reuben Reynolds was married to Lucia A. Tucker, of Vermont. Eight children were born of their union, four of whom are

now living. The daughters are Mrs. L. D. Daggett, of San Antonio, Texas, and Mrs. Minnie Ellis, who resides in California. The two sons are George H. and Fred, both lawyers, the former at St. Cloud, the latter at Duluth, Minnesota.

### JOHN W. WILLIS.

Hon. John W. Willis, late judge of the district court of the second judicial district, was born in St. Paul, July 12, 1854. His parents were Chas. L. Willis and Anna M. Willis. He was educated in the schools in his native city, at the Minnesota State University, Macalester college and Dartmouth college.

After his graduation Mr. Willis entered as a law student the office of John M. Gilman, W. P. Clough and Eugene F. Lane, then co-partners under the firm name of Gilman, Clough & Lane. While pursuing the study of law Mr. Willis served one year as instructor of the Latin and Greek languages in the St. Paul high school. On October 18, 1879, he was examined for admission to the bar before the supreme court, and was duly admitted to practice as an attorney and counselor-at-law. He remained in the office of Messrs. Gilman & Clough for some time after his admission to the bar, and in the year 1880 opened an independent office. After that time, until the date of his elevation to the bench, he was actively engaged in the practice of the legal profession. During the years 1881 and 1882 Mr. Willis was a member of the board of education. In the year 1883 he was unanimously nominated by the democratic state convention for the office of attorney general of Minnesota. During the political campaign which followed he made an extended canvass of the state, delivering public addresses in all the principal cities and towns. Although he received a very large and flattering vote, he was defeated in company with all his associates on the democratic state ticket. In the year 1888 Mr. Willis was appointed by Hon. Andrew R. McGill a member of the state board of corrections and charities.

On the 8th day of November, A. D. 1892, Mr. Willis was elected one of the judges of the district court for the second judicial district of the state of Minnesota. His term of office extended for six years from the 1st day of January, A. D. 1893.

On the 11th day of July, 1894, he was unanimously nominated by the people's party for associate justice of the supreme court of the state of Minnesota.

On the 5th day of September, 1894, Judge Willis received the nomination of the democratic state convention, by acclamation (all the delegates rising), for associate justice of the supreme court.

During his term of service on the bench Judge Willis attracted widespread public attention by his decision upholding the constitutionality of the statute providing for the construction of a state elevator; also by his decision declaring the "ticket scalper license law" unconstitutional upon the ground that it created a privileged class, and by his instructions to the grand jury of Ramsey county to enforce strictly the statute forbidding the employment of child labor.

Judge Willis is a member of the societies known as the "Sons of the Revolution" and "Sons of the American Revolution," being entitled to such membership by reason of the military services of his great-grandfather, Sylvanus Willis, and other ancestors, upon the patriot side of the war of the American Revolution.

Judge Willis was admitted to appear in the United States supreme court in 1890. He also appears in the United States circuit and district courts, supreme court of the state of Minnesota and all the district courts throughout the state. He is a member of the Minnesota State Bar Association and of the Ramsey County Bar Association.

June 30, 1897, Judge Willis was married to Margaret, only daughter of Alfred Wharton, M. D., of St. Paul. His first wife, Eleanor Forsyth, died June 22, 1894.

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#### OZRO BARNES GOULD.

Ozro Barnes Gould, of Winona, a former judge of the district court of Minnesota, is a native of the Province of Ontario, Canada, but is

of American parentage. His father, Ozro A. Gould, was born in Vermont, and his mother, whose maiden name was Mary Barnes, in Connecticut, and they were married in Genesee county, New York.

Judge Gould was educated in the common schools and by two terms in an academy in the state of Ohio. He studied law in the office of Lee & Brewer, at Tiffin, Ohio, and graduated in the law department of the Michigan University in the class of 1867. In the latter year he came to Minnesota, locating at Winona, where he has since been in practice.

He was a member of the legislature from Winona county in 1881-2 and in 1895-6 was judge of the district court for the third judicial district. At this time he was a member of the board of control of the several state institutions. Previously, from 1871 to 1878 he was a member of the State Orphans' Home board.

He served nearly four years in the union army, enlisting in September, 1861, as a private in Company G, Fifty-fifth Ohio Infantry, and rising by successive promotions to the captaincy of his company, with which rank he was discharged in July, 1865. His service was both with the Army of the Potomac, and the army under Sherman. He was wounded and made prisoner at the battle of Chancellorsville, Virginia, May 2, 1863.

Judge Gould has been twice married, viz.: July 1, 1885, at Chicago, to Mary Elinor Couse, of Woodstock, Illinois, who died March 9, 1892; and July 1, 1899, at Minneapolis, to his present wife, who was Miss Etta Thompson.

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#### JOSIAH D. ENSIGN.

Judge Josiah Davis Ensign, who for ten years has been on the Duluth district bench, and is now senior judge of the district, has been a resident of the city of Duluth for thirty years. He was born in Erie county, New York, May 14, 1833. His father was R. S. Ensign, who died in 1896, and his mother is at this writing still living at the age of eighty-nine. One of his great-grandfathers was a soldier in the war

of the revolution, and he comes of an old American family. His education was obtained in the common schools of northeastern Ohio and by a three-years' attendance at Farmington and Orwell academies, in Ohio. When he was only a little past the age of fifteen he began teaching school, and taught during every winter and frequently in summer for seven years, meantime engaging at intervals in the study of law. When he was twenty-two years of age, he was appointed auditor of Ashtabula county, Ohio, to serve out an unexpired term. In 1857 he was admitted to the bar, but before commencing the practice he was elected clerk of the common pleas and district courts of Ashtabula county. He held this office for six years and after the expiration of his second term he commenced the practice of his profession at Jefferson, the county seat of that county, in partnership with an old schoolmate, Stephen A. Northway, who was subsequently for eight years a member of congress. He continued in the practice at Jefferson until 1868. Upon the death of his wife, September 4, 1868, he removed to Rochester, Minnesota, where he had previously spent two summers with his companion for the benefit of her health. He has ever since been a resident of Minnesota.

In 1869 he made a brief visit to Duluth, then a place with the proportions and character of a frontier village, but remained only a few weeks. Not long afterward he returned, but not with the purpose of becoming a permanent resident. The owners of 240 acres of land in Duluth desired to change the plat to conform to the other portions of the city, and they selected Judge Ensign to receive the title of the entire tract, to replat the same and convey the lots to the owners according to the new plat. This work occupied his time for more than a year, and in the meantime he was also engaged in the practice of his profession. In 1870 he was elected county attorney of St. Louis county and held the office for two years, continuing in the general practice during his term.

In 1872 he associated himself in partnership with Hon. O. P. Stearns, and this relation continued until 1874, when Judge Stearns was appointed to the bench of the eleventh judicial district. He then

continued the practice alone for some time, finally forming a partnership with Mr. Daniel G. Cash. January 1, 1886, by the admission of John G. Williams, the firm name became Ensign, Cash & Williams.

In 1889 he was appointed judge of the district.

Of Judge Ensign's character as a lawyer and of his career as a judge, one of his old friends and former law partners says:

"As a lawyer he was exceptionally well qualified and equipped. Gifted with a legal mind, original in thought and expression, with an intense love for his profession, and industrious and methodical in his business habits, he devoted himself assiduously to the study and practice of his profession, and was well prepared and confident in every emergency. It was always a pleasure to listen to his strong, eloquent and logical arguments. Since his elevation to the bench his courteous treatment of the bar and his careful consideration and decision of all matters brought before him, have won the universal admiration of all who have come in contact with him."

Judge Ensign has always been an active and public spirited citizen of Duluth, and at times prominent in its public and official affairs. He served on the high school board for seven years, was for eight years a member of the city council, and was mayor of the city for two terms. He has been married twice. His first wife—to whom he was married while serving as clerk of the courts in Ohio—was Miss Catherine A. Jones, a daughter of Col. Lynds Jones and a niece of Hon. Joshua R. Giddings, the well known abolitionist of the "Western Reserve" of Ohio. Of this marriage there were two daughters: Julia Maria and Mary, the latter now the wife of J. C. Hunter, Esq., of Duluth. As has been stated, his first wife died in 1868, and in December, 1872, he married Miss Rose Watrous, of Bay City, Michigan. Of the latter marriage there is one daughter, Katherine W. Ensign.

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#### GEORGE L. BUNN.

Hon. George L. Bunn, of St. Paul, judge of the district court of Ramsey county, was born June 25, 1865, at Sparta, Monroe, county,

Wisconsin. His is a son of Romanzo and Sarah (Purdy) Bunn, both parents being natives of New York state, and both of English descent. Romanzo Bunn emigrated to Wisconsin in the early fifties, and became one of the best known and most influential lawyers of that state. He was a judge of the circuit court from 1868 to 1877, when he was appointed judge of the United States circuit court for the eastern district of Wisconsin, which position he still occupies.

The subject of this sketch was the third of a family of five children, who are all living, three brothers being lawyers of ability and prominence in the profession. George L. received his early education in the public schools of his native city, and at the age of sixteen entered the preparatory department of the University of Wisconsin; two years later he entered the university proper, graduating from the academic course with the degree of A. B. in 1885. He then went to La Crosse and studied law in the office of J. W. Losey, Esq., until the fall of 1886, when he returned to Madison and entered the law office of S. U. Pinney, Esq., of that city, and at the same time attended the law school of the Wisconsin university, from which he graduated in 1888, with the degree of LL. B. In September, after his graduation, he came to St. Paul and began the practice of law. He was appointed judge of the district court of Ramsey county by Governor Clough, January 2, 1897, to fill the vacancy caused by the death of Judge Kerr, for the term which expired January, 1899. In 1898 he was nominated by the democratic county convention for re-election to the same office, and although the republican county ticket carried the county by a large vote, Judge Bunn was re-elected with a larger vote than any other candidate for the bench. Judge Bunn has never been a politician. His inclinations are strongly toward the democratic doctrines, although he did not have full sympathy with the Bryan campaigns of 1896 and 1900. He possesses a conspicuous natural ability for the position of judge. It is frequently said of him by lawyers who have appeared before him, that when he first assumed the duties of that position he appeared to have all the ease and confidence of a man of long experience on the bench. He takes responsibility without complaint, and decides important ques-

tions arising on the trial of cases with despatch and with the greatest simplicity. He has unusual ability in discerning points in the cases before him, but is patient and considerate in listening to arguments of counsel. He is remarkably fearless, and in cases which involve popular prejudice the people as well as the bar always feel confident that Judge Bunn will hear the facts and determine the law as it appeals to his mind, uninfluenced by any public clamor. His sense of the duty of a judge is so high and so pure that no question of personal friendship or attachment ever occurs to him in his consideration of causes. A prominent judge and leading lawyer of St. Paul says of Judge Bunn:

"I have never known a man so absolutely free from prejudice. He is so constituted that he looks at a case from a legal standpoint, and seems to be wholly unable to see it in any other way. He is absolutely uninfluenced by feeling in the trial of a case. He is prompt, clear, decisive and always courteous."

Judge Bunn is a member of the Minnesota club, Commercial club, White Bear Yacht club and Town and Country club.

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#### NATHAN CURTIS KINGSLEY.

Nathan Curtis Kingsley, of Austin, Minnesota, was born September 10, 1850, at Sharon, New Milford county, Connecticut. The Kingsleys are an old New England family, traceable back to John Kingsley, who, as early as the year 1636, settled in Dorchester, Massachusetts—now one of the beautiful southern suburbs of Boston—and was one of the founders of the first Congregational church of that old town. The more remote ancestry is English. The branch of this family tree with which our sketch is most directly concerned took root in Scotland township, Connecticut, early in the eighteenth century, from whence the great-grandfather of our subject migrated to Pennsylvania and became one of those pioneer settlers in Bradford county who, in 1778, were severely harassed by the Indians near the location of the present Wilkesbarre. This ancestor built a house on the frontier, which is

the oldest structure now standing within the above-named county. In the course of time the family returned to Connecticut, from which state Alonzo and Marilla (Pierson) Kingsley—parents of the subject of this sketch—removed, in the year 1857, to LaSalle, Illinois, Nathan C. being seven years of age at the time of their migration. The elder Kingsley followed the double vocation of farming and carpentry, but on the outbreak of the civil war he laid down his tools and enlisted in the Fifteenth Illinois cavalry, from which he was transferred to the Tenth Cavalry, his service with the two regiments extending throughout the war. The son received a common school education and was ambitious for higher study; but the circumstances of the family were such that he was obliged to become self-supporting at a very early age. At thirteen he began working as a farm hand, and continued as such until he was eighteen, at which age he came to Minnesota. In this state he found employment of the same kind, which he followed for a year, hiring out by the day or month, as his services were required. He then, in 1870, engaged to learn the miller's trade in a custom mill at Orion, in Olmsted county, and this latter business he followed until 1877. In the meantime, in 1875, he had begun the study of law, and in the autumn of 1876 he was admitted to the bar in Fillmore county, having previously moved to Rushford, in that county. In February, 1877, he became associated with C. N. Enos in the firm of Enos & Kingsley. This partnership was, however, dissolved in 1878, in which year Mr. Kingsley removed to Chatfield, Minnesota, to form a new firm with Rollin A. Case, in connection with whom he continued to practice until 1881. After the dissolution of the latter partnership Mr. Kingsley practiced by himself for two years, then became associated with Russell E. Shepherd. In the spring of 1887 Mr. Kingsley and Mr. Shepherd moved, with their families, to Austin, where they resumed practice, continuing as partners until Mr. Kingsley's appointment, on November 26, 1898, to the district bench. Judge Kingsley's political sympathies are on the republican side, and during his professional career he has rendered efficient service in various public capacities. He was president of the school board in Chatfield throughout

his residence in that town, and during the two years prior to his appointment as district judge he served on the board of railroad and warehouse commissioners. In 1880 he was made county attorney for Fillmore county, which office he filled for four years. Judge Kingsley is a Mason, also a Knight of Pythias, an Elk and a member of the Ancient Order of United Workmen. In the Masonic order he has been grand high priest of the state, and at present holds an office in the general Grand Chapter of the United States. In the year 1873 Mr. Kingsley was married to Miss Clara Smith, a native of New York state. Cora Marilla Kingsley is their only child. The judge, together with his family, is a regular attendant at the Episcopal church. Judge Kingsley began life low enough in the business scale, and the success he now enjoys he has earned by faithful and persevering endeavor. Both at bar and on the bench he has won general esteem, and is counted among the leaders in the legal profession of the state of Minnesota.

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#### MARTIN B. KOON.

Judge Martin B. Koon, of Minneapolis, senior member of the well-known law firm of Koon, Whelan & Bennett, was born January 22, 1841, at Altay, Schuyler county, New York. His ancestry on his father's side were a prominent Connecticut family. His father, Alanson Koon, was a farmer in moderate circumstances, in Schuyler county, New York, a man of sterling Christian character. His mother's maiden name was Marilla Wells, and Mr. Koon is wont to speak of her in terms of deep affection and the most profound reverence for her memory. She was a woman of strong character and deeply impressed it upon her children. The most valuable legacy which his parents bequeathed to him was the habit of industry, indomitable perseverance, never-failing energy, and a mind naturally active and studious. While he was yet a lad his father removed with his family to Hillsdale county, Michigan, where Martin grew up on a farm. He recalls that the first money he ever earned was by riding a horse for a neighbor while



*M B Koon*



plowing corn. Mr. Koon attended the winter schools, as most farmer boys did in those days, and worked on the farm in summer. He pursued his studies, however, with such diligence that, at the age of seventeen, he was prepared to enter Hillsdale college. During his college course he supplemented his limited resources by teaching school several terms, but kept up his studies and completed his course in 1863. He had, however, labored so hard as a student as to seriously impair his health, and in 1864, a change of climate becoming necessary, he made a trip to California by way of the Isthmus. The change was beneficial, and after remaining two years in California, engaged in teaching, he returned to Michigan to take up the study of law in the office of his brother, Ezra L. Koon. In 1867 he was admitted to the bar in Hillsdale, Michigan, and soon afterwards entered into partnership with his brother, under the firm name of E. L. & M. B. Koon, which association continued until 1878. While he did not go actively into politics, he was elected to the office of prosecuting attorney on the republican ticket in Hillsdale county, 1870-74. In 1873 he spent four months of travel in Europe. In the meantime he had become convinced that Hillsdale did not offer a sufficient field for the exercise of his talents, and, in 1878, he removed to Minneapolis. His career since he came to this city is briefly but ably summarized as follows, by one who is in a position to know Judge Koon as a lawyer and as a man:

"Beginning practice in Minneapolis, Judge Koon almost immediately ascended to the front rank of his profession, and soon came to be recognized as one of the few leaders at the bar of Minneapolis and of the state. In 1883 a vacancy occurred on the district bench, and at the unanimous solicitation of the Hennepin county bar, he was appointed to fill this vacancy. At the election following he was chosen without opposition for the term of seven years. When later he decided to retire from the bench his resignation was regarded as a great misfortune by the entire profession and the whole community. During his occupancy of that position he decided some of the most important cases ever tried in his judicial district, and his decisions, when appealed, were almost invariably affirmed. Possessed of fine legal attainments, with a remarkable ability to decide quickly, and an unusually keen

sense of the dividing line between right and wrong, between justice and injustice, he combined all the elements requisite for an able and upright judge."

On retiring from the bench, Judge Koon resumed the practice of law, and is now the senior member of the firm of Koon, Whelan & Bennett, which enjoys one of the most desirable and lucrative practices in Minneapolis. Judge Koon is a member of the Minneapolis club, the Commercial club, the Chamber of Commerce, and a trustee of the Church of the Redeemer. He was married in November, 1873, to Josephine Vandermark, of Phelps, New York. To them have been born two daughters, Katherine Estelle and Martilla Louise.

1908



Ch. Benton

## CHAPTER XIV.

### COMPRISING A NUMBER OF INTERESTING SKETCHES OF MEN WHO HAVE ATTAINED PROMINENCE IN THE PROFESSION.

#### CALEB HENRY BENTON.

Caleb Henry Benton, deceased, was born at Lunenburg, Essex county, Vermont, February 26, 1841, and in the forty-nine brief years of his existence gave a practical illustration of the success which may be achieved by a young man who possesses pluck and industry. He rose by application and well placed energy to rank among the most prominent and honored members of the Minnesota bar. Ambitious for a collegiate education, he entered the grammar school at Johnson, Vermont, and took the preparatory course which enabled him to enter the University of Vermont in 1860. When the governor called for troops C. H. Benton was among the first of the Green Mountain boys whose patriotic zeal inspired them to answer the appeal, and he left college and enlisted in Company D, Fifth Regiment, Vermont Volunteers, April 16, 1861. He was mustered as private August 21, 1861, and until he was mustered out on September 15, 1864, took part in the fiercest and most obstinately contested engagements of the rebellion, his conduct at all times being meritorious and brave. It was in recognition for this bravery that he was promoted December 1, 1861, to the rank of sergeant major, and on the 9th of the following July he was made second lieutenant of his company. He was fearless and daring, the privations and hardships endured by the soldiers only strengthening his determination to give the best that was in him to the suppression of the rebellion. He was mustered out as first lieutenant of his company and at once resumed the broken thread of his private life, taking up the study of law. He entered the law school at Albany, New York, graduating in May, 1866, and on the 25th of

the same month was admitted to the bar in Lamoille county, Vermont. He began practicing in Hyde Park, and in 1871 left that location to take up his residence in Minneapolis, which was his home up to his death.

Mr. Benton was twice married, first to Miss Flora E. Hadley, of Johnson, Vermont, to whom he was united June 25, 1866, and who died three years later. It was on November 20, 1874, that he was married to Miss Janet Graham, of Minneapolis. November 24, 1885, he was called to mourn the death of this wife, who left three children, Crissie May, now Mrs. Norman M. Smith, of Allison, Iowa, Harry Graham and Mabel Janet, of Minneapolis. These children were the objects of his most solicitous care and, so far as lay in his power, he supplied the place of the loving and beloved mother.

As a lawyer Mr. Benton was second to none in the state, his ability in every department of his profession being a subject of comment and admiration, even among those who knew him best. He was fair-minded and conscientious, forming his opinions after due deliberation and holding them fearlessly and unflinchingly when satisfied that he was right. A man of strong convictions and friendships, he was almost universally respected and honored, and probably we cannot better express this general feeling than by quoting a few paragraphs from the Minneapolis papers concerning him. The *Tribune* contains the following: "Very properly Mr. Benton was regarded as one of the ablest members of the Minneapolis bar, and the conduct of many important cases have been intrusted to him since his arrival in Minneapolis. While city attorney he was exceedingly prompt and accurate in his opinions, few, if any, of them having been reversed by the higher courts. After Mr. Benton's term as city attorney, he was employed as counsel in a number of the most prominent criminal cases which have been tried in the courts of the state, and the ability of his management has been conceded by all members of the bar. In politics Mr. Benton was ardently but not offensively republican. He was never disposed to force his opinions upon others, but others were never known to force their opinions upon him. He was absolutely self-reliant, independent and

fearless—one whom nothing could swerve from his convictions of duty."

The *Times*: "Mr. Benton has been a resident of Minneapolis for nineteen years and was prominently known all over the northwest as an able and conscientious lawyer and a good citizen." The *Pioneer Press* says: "He was regarded as one of the best lawyers in the city. He was careful and conscientious in the practice of his profession and had a lucrative practice."

Mr. Benton was prominent in Masonic circles and considered the best informed in the laws of that institution of any man in the state. He was at one time grand master of the state and past commander of Darius Commandery, Knights Templar, of East Minneapolis. He was also a member of George N. Morgan Post and of Hennepin Lodge, No. 4, of Minneapolis. While he was reserved in manner with strangers, he was jovial and genial with those he knew and a most entertaining companion. The only public office he ever held came to him unsolicited in 1880, when he was elected city attorney of Minneapolis, a position he filled most faithfully and effectively for two terms.

Mr. Benton had been suffering from heart trouble for two or three years, but only his most intimate friends were aware of this, and his death, which occurred very suddenly November 10, 1890, came as a shock and a feeling of personal loss to the thousands who had known him. The following memorial is filed in the district court of Hennepin county, a heartfelt tribute of the county bar:

"During the present year the bar of Hennepin county has been called upon to mourn the loss, by death, of some of its most distinguished and honored members, and to-day we have again assembled to give expression to a new sorrow on account of the death of another lamented brother, the Honorable C. H. Benton, and place upon record a brief tribute to his exalted worth and of our respect to his memory. Mr. Benton died suddenly in his office on the 10th inst. at the age of forty-nine years, and although the event was not altogether unexpected to him, but few of his brethren at the bar knew he was in ill health, so uncomplainingly had he carried the secret of his bodily infirmity. He died in the full strength of his manhood, and before his

sun had scarce reached the meridian. For almost a quarter of a century he was engaged in the active, diligent and successful practice of the law, and had, by his careful study and close application, not only thoroughly trained himself for the practice of his chosen profession, but had attained a high rank among the ablest members of this bar. He was possessed of eminent ability as a lawyer and excelled in all branches of his profession. He was devoted to the interests of his clients, and they always found in Mr. Benton an honest, honorable and faithful counselor and advocate. He was a man of strong convictions and always possessed of the courage to maintain them. He was a fearless man; a man of strong and rugged character, but, with it all, he was a gentleman. To those who were but slightly acquainted with him he may have appeared reserved and austere, yet he was one of the most gentle, genial and kind hearted of men. He loved his friends and was true to them through all the vicissitudes of life, and in return enjoyed the love, confidence and respect of all who knew him well. The early years of his manhood were given to the service of his country in her hour of supreme peril, and for more than three years he shared with his comrade patriots the hardships and perils of war, and cheerfully made proffer of his life upon his country's altar. This brief memorial would be far from complete if his bravery and patriotic services to his country were not made conspicuous. In the midst of his usefulness he has been removed from earth and his life work suddenly ended. In his death, the community in which he lived and the state of his adoption have lost an upright citizen, our profession one of its most gifted members, and his family of motherless children a loving and tender father. We extend our heartfelt sympathy to the bereaved and will always honor the name and cherish the memory of our deceased friend. We respectfully request the court to direct that this memorial be entered upon the records of this court, with such other proceedings as may be had in connection therewith, and that a copy thereof be transmitted to the family of the deceased."

The following touching tribute from the memorial of the Loyal Legion of the United States makes a fitting close for these brief memoirs of one so generally loved and respected: "His was a strong, marked character, and wherever he was known he will be missed and mourned. The world is better because he lived, and, but for the memory of the loyal, true and courageous life he lived, it will be far





J. M. GILLMAN.

poorer for his untimely death, in the prime of manhood and growing power. To the doubly orphaned children this Commandery sends assurance of most solicitous care, and records its belief that the granite block, brought by our late companion from his own New England hills, under the shadow of which he lies, is a fit monument for one whose character, however rough in exterior, was within as true and solid and as firm as the massive stone which, in beautiful Lakewood, marks his last resting place on earth."

### JOHN M. GILMAN.

John M. Gilman, a prominent attorney of St. Paul, has been closely identified with the history of Minnesota ever since it became a state. He was born September 7, 1824, at Calvais, Vermont, the son of Dr. John Gilman and Ruth (Curtis) Gilman. Both parents were natives of New England, and of old Puritan stock. The father died when his son, John M., was only five months old. He was reared on a farm and attended the common school in his boyhood, and graduated from Montpelier academy in 1843. After reading law under Heaton & Reed, of Montpelier, he was admitted to the bar in 1846. In the same year he removed to New Lisbon, Ohio, where he practiced law for eleven years, also representing Columbiana county in the legislature of Ohio during 1849-50. In 1857 he married Miss Anna Cornwell, a native of New Lisbon, and removed to St. Paul. Here he was first associated with James Smith, Jr., and later with W. P. Clough. The latter partnership, which was formed in 1872, was dissolved when Mr. Clough entered the railroad world, and since then Mr. Gilman has been practicing alone. As a lawyer he was for many years considered by bench and bar as one of the ablest in the state. He urged his cases on purely logical grounds, clear, cogent and concise. He would never urge a cause that he did not consider just and right, and never resorted to any pettifogging practices. Strictly honest and upright, he is a profound student, thoroughly devoted to

his profession, quiet and undemonstrative, yet always earnest in whatever he does. In political life Mr. Gilman was, for many years, a conspicuous figure. In 1860 he was nominated by the democratic party for congress, and made a remarkable stumping tour with his opponent, Hon. William Windom. In 1864 he ran against Hon. Ignatius Donnelly for the same high position. Although defeated in both instances, his canvass was of a character which left its impress upon the people, and he was repeatedly elected to the legislature, in 1865, 1867, 1869, and again in 1876.

There are many interesting incidents in the life of Mr. Gilman, no doubt well remembered by those who are still living who were in St. Paul in early days. When the civil war broke out, in 1861, and President Lincoln sent out a call for volunteers, one regiment was asked from Minnesota. Public sentiment was pulsating, tremulous, and uncertain, and the great question of the day was, what the northern democrats would do or what attitude they would assume. In order to test the sentiment of St. Paul a meeting was called at the capitol grounds to consider the raising of a regiment. But the real purpose was to test the sentiments of the democrats. Mr. Gilman, together with Earl S. Goodrich, then editor of the *Pioneer*, were the first to put their names to the call, and Mr. Gilman made a speech in support of President Lincoln and for the prosecution of the war, which he predicted would be continued until the last slave had been liberated. His remarks at the time were considered extravagant. Many now living will remember the speech well. Thereafter he made many more speeches in support of the prosecution of the war and the abolishing of slavery. But Mr. Gilman became dissatisfied with the ideas advanced by the republican party in the prosecution of the war, and accused the party of trying to further its own interest. He therefore returned to the fold of the democratic party, and has maintained his allegiance to the same to the present day. He is very pronounced in his views, and especially on what he terms to be the true Jeffersonian democracy. Perhaps the most important event in Mr. Gilman's life was his argument before the supreme court, in 1881, in favor of the constitution-





Wm. B. Curtis

ality of the legislative act providing for the adjustment of the old Minnesota state railroad bonds. His argument in that important case has always been regarded by lawyers as one of the best ever presented in any court. Of late years Mr. Gilman has not taken any active part in the political battles of the state, county or city. In April, 1877, he lost his two sons, aged eighteen and seventeen, respectively, by drowning in the Mississippi river, and this calamity has heavily weighed upon him, as a result of which he has sought retirement from professional life. It was years before he fully recovered from this shock, but he steadfastly declined after that time to enter public life, limiting his activity to his law practice. Mrs. Gilman died in October, 1895. Two daughters, both married and residing in St. Paul, are still living, one being married to L. P. Ordway and the other to J. P. Elmer, with the latter of whom he resides.

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#### GOLD TOMPKINS CURTIS.

Gold Tompkins Curtis, a son of John G. Curtis, a wealthy and generous merchant, and Ruth (Bartlett) Curtis, was born at Eaton, New York, on August 16, 1820. He graduated at Hamilton college, 1839, being salutatorian of his class. His legal studies were commenced with Judge Monall, of Chenango county, and completed with Governor Seymour, at Utica. In 1849 he married Mary A. Anderson, of Belleville, New York, and 1853 he removed to Stillwater, Minnesota, and entered upon a legal practice that soon became extensive and lucrative. In the fall of 1854 he was elected district attorney for Washington county, in 1855 judge of probate, and a year later, being the democratic candidate for judge of the supreme bench of Minnesota, was defeated by a small majority. In the spring of 1857 he was elected without opposition to the first constitutional convention of Minnesota, and took a prominent part in the framing of its laws.

Mr. Curtis politically was a war democrat, and early in 1862 announced his intention of enlisting. He declared his sentiments in a remark made to the Rev. Mr. Bull, afterwards chaplain of a Min-

nesota regiment: "Slavery must fall in this war. I want a hand in it. I want it said when I am gone that I aided and participated in this great struggle." In May, 1862, he received a captain's commission and recruited a company at large personal expense and by personal influence for the Fifth Minnesota regiment. He shared with his company in the hardships and struggles that preceded the evacuation of Corinth. Early in July he was taken sick and was furloughed by General Rosecrans and started for home, but was only able to reach St. Louis, where his wife met him, and he died of dysentery July 24, 1862. At the time of his furlough the necessary arrangements had been completed, and had he survived he would have been transferred to Gen. Rosecrans' staff. The funeral ceremonies which honored his burial in Stillwater were the most imposing ever witnessed in that city. The music was especially composed for the occasion, and he was buried with civic, Masonic and military honors.

In the eulogy spoken at his funeral it was said: "Well may the poor come to the funeral of Gold T. Curtis. He was their friend. He belonged to no one class, he was every man's friend. No man could have been taken from our midst as much missed as Gold T. Curtis; missed on the street, missed in his office, missed in the court room, missed in the sanctuary, missed everywhere."

We think this sketch cannot be better brought to a close than by quoting from the necrology record of Hamilton college: "In professional life Mr. Curtis ranked with the ablest lawyers of his adopted state. In the conduct of a suit and as a pleader in open court he is said to have been without a rival. With a mind comprehensive, well furnished and tenacious, he never lost his self-possession or forgot the main point that he would win. Socially his sunny temperament and ready wit made him the life of the circle in which he moved. Religious and charitable objects were largely helped by his example and liberality. It was a surprise to his friends that he should leave a lovely family, a large practice and a position most exceptional for duties so new, so arduous and perilous. It was the self-sacrifice of a true patriot."





John Espy.

His grandfather, David Curtis, had exhibited the same heroism at Sackett's Harbor, and it may be ancestral example helped to determine the struggle in his own mind before he really gave himself to his country.

Captain Curtis is survived by his wife and two children, Gold T. Curtis, for some years president of the First National Bank of Great Falls, Montana, and his daughter, Jenny Olive Curtis, who married Henry W. Cannon, ex-comptroller of the United States, and now president of the Chase National bank, New York City.

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### JOHN ESPY.

Maj. John Espy, one of the foremost citizens of St. Paul, Minnesota, first saw the light of day in the historic Wyoming valley at Nanticoke, Luzerne county, Pennsylvania, September 21, 1842. His ancestral tree bears many renowned names. James P. Espy, the noted meteorologist, was duly commissioned by the United States war department to prosecute his investigations in the Washington observatory. Several volumes of his reports were published. While holding this office he instituted a service which consisted of daily bulletins respecting general atmospheric conditions. He may, indeed, be justly regarded as the founder of the now universal weather bureau system. M. Arago, the eminent French savant, says: "France has its Cuvier, England its Newton, America its Espy." The progenitors of the American branch of the family can be traced back to the beginning of the eighteenth century. George Espy, a native of the north of Ireland, settled in Derry township, Lancaster county, Pennsylvania, in 1729, and died in 1761. Josiah Espy came from the north of Ireland and settled in Hanover township, Lancaster county, where he died. George, a son of Josiah, was born in 1749, and was a soldier in the war of independence. He married Mary Stewart, a sister of Capt. Lazarus Stewart, who fell at the battle of Wyoming—a region which for many years was the scene of sanguinary conflicts between contending patriots and the Tories, British and Indians, and famed, later,

for the long series of internecine contests known as the "Pennymite Wars." Captain Stewart was leader of the celebrated Paxton boys of Pennsylvania, who left Hanover township in Lancaster county and settled in Hanover township in Luzerne county—a township named by him. During the struggles in the Wyoming valley, which lasted nearly eight years, the captain rendered patriotic and distinguished services. Josiah Espy, Jr., and Samuel Espy, brothers of George Espy, were also soldiers of the revolution. They served under Capt. Ambrose Cain, whose command bore a gallant part at Brandywine, Germantown, and elsewhere. In 1809 John, a son of George Espy, married Lavina Inman, a daughter of Col. Edward Inman, of the revolutionary army. In 1841 James, eldest son of John and Lavina Espy, married Mary A. Miller, a daughter of Barnet Miller.

And then, through a long line of patriotic and distinguished ancestry, we bring this genealogical table down to September 21, 1842, at which time John Espy, the subject of this sketch and a son of James and Mary A. Espy, was born at Nanticoke, Luzerne county, Pennsylvania. In 1868 he married Martha M. Wood, a daughter of John B. Wood, of Wilkes Barre, Pennsylvania. Her father was a prosperous merchant and banker, and her mother, whose maiden name was Sarah Gore, was descended from one of the oldest and most honorable families in America. Her great-grandfather and five of his sons fought against the British and Indians in the Wyoming valley campaigns.

Major Espy has an interesting history. Much of his childhood was spent under the care of his paternal grandmother, Lavina Inman Espy, a woman of broad culture and great intelligence. In 1860, when only seventeen years of age, he entered upon a career of independence. Equipped with a good common school education, habits of industry and ambition to succeed, he came westward and located at Burlington, Iowa. The war of the rebellion set the country ablaze the following spring, and John Espy was among the first to enlist in Company E. of the First Regiment, Iowa Volunteer Infantry, in response to President Lincoln's first call. This regiment fought under

Gen. Nathaniel Lyon in those campaigns which did so much to save the state of Missouri to the Union. Young Espy accompanied it in the expedition under General Sweeny to Forsyth, near the Arkansas line; was in the engagement at Dug Springs, and took part in the memorable battle of Wilson's Creek, August 10, 1861, in which action the lamented Lyon fell and the First Iowa lost 151 men in killed and wounded. A few days after this battle the First Iowa's term of enlistment expired, and Espy was mustered out of service. He intended to re-enter the army forthwith, but his left hand became crippled for life by a sorghum mill, and rendered him incapable of further service as a soldier.

It was at this period that John Espy returned to Pennsylvania and completed his education. He was graduated from the new Columbus academy in 1863, from Harvey's institute in 1864, and from the Albany (New York) law school in 1866. From this last named school he received the degree of Bachelor of Laws. He was admitted to the bar of Luzerne county, Pennsylvania, April 20, 1868.

In 1871 he was commissioned aide-de-camp, with the rank of major, on the staff of Gen. E. S. Osborn, of the Pennsylvania National Guard. He served in that capacity for ten years, and took an active part in suppressing the riots at Scranton in 1871, at the Susquehanna depot in 1877, and at Hazleton in 1878.

Major Espy came to St. Paul in 1879. Admitted to the Ramsey county bar, he for a time occupied the same office with Hon. Hiram F. Stevens. While he still conducts an office practice, his large investments and property holdings occupy most of his time.

Major Espy's whole life bespeaks the man. Respect has followed him through all the years. He and his estimable wife have four children—John B., Lila Wood, Maude M., and Olin. Although past the half-century mark, he is still strong and active and manifests no sign of lessening interest in the development of his chosen field of labor. To a man of his temperament, there can be no period to his career until its final close.

## LEWIS L. WHEELLOCK.

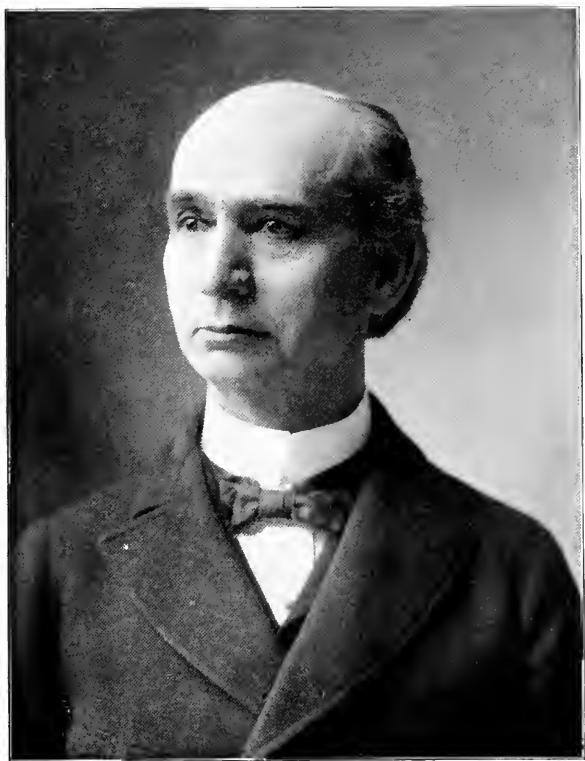
Hon. Lewis L. Wheelock, of the firm of Wheelock & Sperry, Owatonna, has been a resident of Minnesota since 1866. He was born in Mannsville, Jefferson county, New York, November 12, 1839. His parents were Lewis L. and Mary (Howe) Wheelock.

Mr. Wheelock was educated in the common schools of his native town and the Monroe and Macedon academies, and University of Albany, law department, of New York. He first read law under Hon. Chas. C. Dwight, of Auburn, and subsequently entered the office of Hon. W. R. Kinyon, of Owatonna, Minnesota. He came to Minnesota September 3, 1866, and April 8th, the following year, he was admitted at Owatonna to the Minnesota bar; and May 5, 1869, he was admitted at Albany to the bar of New York. In 1877, at St. Paul, he was admitted to practice before the United States circuit court, and in 1902, at Washington, District of Columbia, he was admitted to practice before the United States supreme court.

During all these thirty-seven years Mr. Wheelock has resided in Owatonna, and by close application and unfaltering zeal in behalf of his clients, he has won a place in the front ranks of the profession. He is entitled to be classed not only as a capable, learned and well equipped lawyer, but as a genial gentleman, a good citizen and a worthy member of society.

Some of the more important cases in which he has been retained may be mentioned: *D. S. Piper vs. J. A. Sawyer*, which in different forms lasted seven years and was tried four times in the district court, three times in the supreme court and once in the United States supreme court. He was counsel for plaintiff, who was successful in every trial, except in one point. It was remanded to district court for amendment of findings. (Rept. 73 Minn. 332, 78 Minn. 221, 83 Minn. 474.) *Slingerland vs. Norton* (50 Minn. 351).

His firm is also local counsel for the Rock Island & Pacific Railway; Owatonna Manufacturing Company; Owatonna Light and Heat Company, and the First National Bank of Owatonna.



*Lewis L. Wheelock*







*H. C. Eddy*

Early in the outbreak of the late war Mr. Wheelock shouldered arms in defense of his country. In August, 1862, he enlisted in the One Hundred and Sixtieth New York Infantry Volunteers, and served as captain and first lieutenant of his company. He went with Banks' expedition to New Orleans, and participated in all the important campaigns and battles in the gulf department. He was with Sheridan in the Shenandoah valley, and after the grand review at Washington he went to Georgia, and was honorably discharged from service in November, 1865. Since the organization of the Grand Army of the Republic he has taken an active interest in that body, and is past department commander. He has always taken a keen interest in state and national politics, though never devoting his time and energy to office seeking. He has served his constituents as state senator one term and has held the office of city attorney of Owatonna and judge of probate of Steele county. He has also taken a lively interest in educational matters, and has done much good along this line, serving as president of the board of education of his city. He is a member of the Congregational church, and also of the Masonic, Knights Templar, Loyal Legion and Grand Army of the Republic bodies.

Mr. Wheelock was first married at Hillsdale, Michigan, July 24, 1871, to Miss Adeline Burch, to whom were born seven children: Mary Agneta, deceased; Lewis B., deceased; Arthur B. and Dwight L., of Seattle; Addie C., now in Carleton college, Northfield; Minnie A., deceased, and Paul A., the latter two being twins. His second wife was Mrs. Miranda A. Inglis, of Chicago, to whom he was married April 22, 1902.

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#### HOMER C. ELLER.

The late Judge Homer C. Eller was for more than twenty years a prominent member of the St. Paul bar. Mr. Eller was a native of the Hoosier state, where he was born July 9, 1845, at Mishawaka,

in St. Joseph county. His father, Moses Eller, was born in Pennsylvania, and his wife, Elizabeth Weeks, was a native of Ohio.

After the death of his mother Homer began working on a farm in southern Michigan for his board and clothes, attending a winter school. A little later he traveled on foot through portions of southern Michigan, selling books and charts. When about thirteen he went to South Bend, Indiana, where he made his home until 1861 with E. R. Farnam. Early in the year he entered the postoffice at South Bend as a clerk, and in the following August he enlisted as a musician in Company F, Twenty-ninth Indiana, and served out his first term of enlistment. He re-enlisted in December, 1863, and remained in the service, being a portion of the time in the detached service until December 2, 1865, when the regiment was mustered out. He was present at the battles of Shiloh, siege of Corinth, Truine, Stone River, Liberty Gap, Chickamauga and in several minor engagements.

His early education was obtained in the common schools of southern Michigan and northern Indiana. This he supplemented by a course of self-instruction in the higher mathematics, pursued while he was in the army, with such books as he could carry in a knapsack, and by a short period spent in the Northern Indiana college after his discharge.

In 1866 Mr. Eller entered the law office of Hon. W. G. George, of South Bend, Indiana, and subsequently attended the law department of the University of Michigan, graduating with the class of 1868. During the fall of 1869 he located in St. Paul and entered the law office of Messrs. Bigelow & Clarke, afterwards Bigelow, Flandrau & Clarke. He remained as a member of this firm until August 1, 1874, when he formed a partnership with John D. O'Brien under the firm name of O'Brien & Eller. T. D. O'Brien was later admitted to the firm, and it was known as O'Brien, Eller & O'Brien. In October, 1885, Mr. Eller severed his connection with the firm and formed a new partnership with Greenleaf Clark and Jared How, the firm being known as Clark, Eller & How. In January, 1888, Judge Clark retired from active practice, from which time the firm was Eller & How.





*C. N. Berry*

Mr. Eller enjoyed an extensive practice, and had not only the esteem of the members of the St. Paul bar, but throughout the entire state.

In October, 1876, Mr. Eller became the editor of the *Syllabi*, a small legal publication of eight pages, which was being published weekly by John B. West & Co. After six months' appearance this publication was changed to the *Northwestern Reporter*, which was the beginning of the National Reporting System, an extensive publishing business now conducted by the West Publishing Company. Mr. Eller continued as editor of this publication until May, 1882. During this period he prepared a digest of volumes 1 to 25 of the Minnesota reports, which were published by the West Publishing Company in 1882.

When the St. Paul municipal court was organized Mr. Eller was appointed the first special judge, and served several years in that position. In politics he was a republican, but never took a very active part in the campaigns.

In June, 1877, he was married to Miss Mary Creek, who died in August of the same year. August 28, 1879, he was married to Miss Ada Farnam, to whom four children were born. The death of Judge Eller occurred November 3, 1896, deeply regretted, not only by the profession, but by a large circle of friends and acquaintances.

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#### CHARLES H. BERRY.

The late Judge Charles H. Berry, of Winona, who died August 21, 1900, was one of Minnesota's sturdy pioneers, and the state owes to him no small debt of gratitude, not only for the faithful performance of his arduous public and private duties, but for the unselfish interest which he always manifested in matters that pertained to its material and moral progress. The normal schools owe their existence largely to his unremitting toil and persistent efforts. He was largely instrumental in securing the first state normal school at Winona, and in the legislature he succeeded in defeating the attempt made in 1874 to eliminate normal schools from the educational system.

But Judge Berry was devoted to the law, and during his lifetime maintained a foremost place at the bar of the state, and particularly of Winona county, until his appointment by President Cleveland to the federal bench in Idaho in 1888, which position he held until the admission of Idaho as a state.

Charles Henry Berry was born at Westerly, Rhode Island, September 12, 1823, son of Samuel F. and Lucy (Stanton) Berry. The family are descended from Huguenot emigrants, who fled from France at the time of the persecution. The grandfather, Samuel Berry, held the office of justice of sessions in the county of Kings, Rhode Island, under the Colonial government. His commission dates from May 7, 1774, and was issued in the name of "His Most Sacred Majesty, George the Third."

Samuel F. Berry in October, 1828, removed with his family to Steuben county, New York, by emigrant wagon and settled in what was then a dense wilderness.

It is now difficult to realize the toil and privations of life in the then western country, but they were an inspiration to the spirit of the hardy pioneers who were laying the foundations of our institutions, and it was with such an environment that our subject was reared and grew to manhood. His education was of the best that the schools of that day could afford, and after his graduation from Canandaigua Academy in 1846 he devoted himself to the law. When he had been admitted to the bar he opened an office at Corning, New York, among the friends of his boyhood. In November, 1850, Mr. Berry was married to Miss Frances Eliza Hubbell of that city. They had one child, Kate Louise, now the wife of Mr. C. A. Morey. In 1851 he took as a partner Hon. C. N. Waterman. The firm of Berry & Waterman continued, first at Corning, New York, then at Winona, Minnesota, until 1871, when the junior partner was elected to the district bench. Judge Waterman died in 1872, and in 1879 another partnership was formed with C. A. Morey, under the firm name of Berry & Morey.

Judge Berry was attorney of record in the first judgment docketed in Winona county, *Frederick S. Barlow vs. Charles S. Hamilton*, for \$1,544.60, rendered and docketed August 7, 1855. Though an attorney, his desires were always for peace and not for controversy, and he rarely allowed a suit to be litigated if in his power to secure a settlement. Judge Berry was a life-long democrat, but never an office seeker, yet he held office from time to time. He was twice a state senator, and the first attorney general of the state. He took a keen interest in educational matters and for many years was president of the board of education of Winona. He was also for several years resident director of the normal school at Winona, and a member of the state board of corrections and charities. In works of internal improvement of the state, as well as in all things pertaining to the benefit of the city and county, he took great interest and gave active and efficient aid. While upon the federal bench in Idaho, several of his decisions upon questions pertaining to irrigation and the Mormon church were of national importance. They were in every case sustained by the supreme court of the United States.

It is difficult in this brief sketch to do full justice to the career of Judge Berry, but we may note a few of the characteristics of the man. While in early life he devoted considerable time and energy to politics, and later on occupied various public positions, yet, in all that he did, or tried to do, he was inspired by a public spirit of the very highest order. His ambitions were honorable; his methods were free from even a taint of fraud or corruption; and in the discharge of his official duty, he was devoted to the public welfare. He had none of that flashing and oftentimes superficial brilliancy which characterizes many men who strive for public favor. He was a plain, unassuming man, without pretensions, or any of the arts or tricks that are sometimes used by public men to win business and popular applause, and which pass for personal magnetism.

He made his way by sheer strength of character and upon his merits as a man. A prominent characteristic was his independence of thought and purpose. He never surrendered his judgment or con-

victions to any man. He had a marked individuality, an absolute truthfulness and a sense of integrity that nothing could swerve.

In all his long career, both public and private, no breath of scandal ever touched him; no suspicion of dishonor ever followed him; no suggestion of unlawful gains was ever laid at his door. He was high-minded and clean-handed, always true to every trust reposed in him and honorable in all his relations with men. Others have held higher official positions, possessed greater wealth, exercised more power, but none have lived up to a higher standard of manhood and citizenship, or died with a cleaner record.

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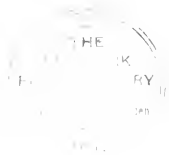
#### HENRY HINDS.

Henry Hinds, one of the pioneer editors and lawyers of Minnesota, died at his home in Shakopee, October 11, 1903. He was born at Hebron, New York, March 12, 1826; graduated from the Albany Normal college in 1850; completed a course at the Cincinnati law school in 1852; was united in marriage at Salem, New York, September 1, 1853, to Miss Mary F. Woodworth; and in 1854 he moved to Shakopee, Minnesota, where he opened a law office. There being but little professional business at that time for a lawyer, he engaged temporarily in various surveying work, for which he was well fitted. In 1856 he was elected county attorney of Scott county. In 1861 he was chosen judge of probate and served in that capacity until 1865, when he was again elected county attorney. In 1867 he bought the Shakopee Argus and conducted it, editorially, for fifteen years, when he installed his eldest son, Henry Hinds, Jr., as editor. He was a charter member of the Minnesota Publishers' association. In 1878 he was a member of the lower house of the state legislature, and afterwards served two terms in the state senate—1879-1881.

In the legislature Mr. Hinds at once took a place in the front rank of its statesmen. It was a time of memorable affairs in the history of the state. The great issue of years, the readjustment of the old territorial railway bonds, was settled, and he became a leader against the readjustment of what many of the territorial pioneers deemed a



*Henry Hinds*



swindle. The state had its first touch of the impeachment of a member of its judiciary. Judge Page, and Mr. Hinds was appointed a member of the board of managers upon the part of the house of representatives to conduct the prosecution before the senate, and he made the closing argument. The great county seat fight of Scott county was fought out and won, and the persistence with which he fought for his home town on the issue so impeded other legislation as to finally lead to the proposal by the legislature of an amendment to the constitution prohibiting the enactment of any special legislation for changing county seats, and the amendment was adopted. At the request of the senate he drafted the judgment in the impeachment proceedings of Judge Cox.

As a lawyer Mr. Hinds did his hardest work. He prepared his cases with infinite care and zealously advocated them in court. In the long term of years that he was in active practice his business was extensive, the questions involved numerous, and the practice not well settled. He and the few other early lawyers of the territory and state founded their law upon principles, not precedents, and, as shown by the first thirty volumes of Minnesota supreme court reports, they settled for coming generations of lawyers in this state a large part of the principles of pleading and practice. In his personal business life Mr. Hinds was governed by the highest moral code. In his home he was genial, talkative, and a good entertainer. He had a deep affection for his family. He began to retire from his profession in 1884. He traveled extensively in the United States and Europe a dozen years ago, and later years were devoted to caring for his property and in the quiet of his home.

He was a descendant of James Hinds, who emigrated from England and was a resident of Massachusetts Bay Colony at least as early as 1635. Though of the seventh generation of the family in America, Henry Hinds still possessed traits of his Puritan ancestors; notably, those of industry, simplicity and uprightness. Like them he had severed the associations and ties that bound him to his childhood home and endured all the hardships incidental to western pioneering.

Few of the pioneers of Minnesota were more widely known or more thoroughly esteemed than was Henry Hinds. Upon his death the newspapers of the state eulogized his life and character in columns of appreciative recognition of the great service he had rendered as a citizen. He was styled "The Grand Old Man of Shakopee," and a brief extract from one of the newspaper obituaries will illustrate the general estimation in which Henry Hinds was held.

"He was an able and conscientious lawyer and ranked high in his profession. He was a broad minded and public spirited citizen and always took an active part in the promotion of public institutions and in the building up of his adopted city. He always took an active part in politics and worked zealously for the promotion of the principles which his convictions told him were right. He was kind hearted, generous and affable, and in his death the state loses one of her best citizens."

#### AMASA C. PAUL.

Amasa C. Paul, of the firm of Paul & Paul, Minneapolis, Minnesota, was born in Wakefield, New Hampshire, September 12, 1857. He was educated at Dartmouth college and became a teacher in the Franklin public school, Washington, D. C., in February, 1877, and continued teaching until January 1, 1881, at which date he was appointed an assistant examiner in the United States patent office. While teaching he attended the law schools of the National university and the Columbian university, graduating from the former in 1880 and from the post graduate course of the latter in 1882. He was admitted to the bar in 1880 and in 1884 came to Minneapolis, and has since that time been in constant practice. He has made a specialty of the law of patents and trade marks, and is the author of a work on trade marks issued in 1903 by the Keefe-Davidson Co., of St. Paul. He was for two years president of the Minneapolis Commercial club.

#### REUBEN CLARK BENTON.

From his settlement in Minneapolis in 1875 until his death Colonel Benton was one of the most prominent figures at the bar. He was



A. C. Paul







*R. C. Benton,*

reared and educated in New England, where his ancestors had been prominent in public affairs, and where he himself had practiced law for twenty years prior to his coming west.

He was born in Waterford, Vermont, May 13, 1830. His father was opposed to his taking an education, and so he put himself through school and college, graduating from the University of Vermont in 1854. His inclination was towards the law, and he began reading with an uncle, Jacob Benton, of Lancaster, New Hampshire. He was admitted to the bar in 1855 and began practice the following year. When the war broke out Mr. Benton answered the call to arms in 1861. He was mustered in as a private in the Fifth Vermont Infantry, and was finally mustered out a lieutenant colonel, Eleventh Vermont Infantry, later known as the First Vermont Heavy Artillery. His military career was a brilliant one, and would have been longer but for a malarial fever contracted at Cold Harbor, which compelled him to resign his command. Later he took part in repelling the raid on St. Albans, but, after two months of service, returned to the law. His practice was a large and varied one, and extended over a number of counties in the Green Mountain state.

In 1856 he was married to Miss Sara Maria Leland, of Johnson, Vermont.

Upon coming to Minneapolis, Colonel Benton formed a law partnership with his younger brother, C. H. Benton, into which William P. Roberts was admitted in 1878, under the firm name of Benton, Benton & Roberts, which continued until 1881, when with Mr. Roberts the firm of Benton & Roberts was formed. From 1890 until the time of his death Rome G. Brown was associated with them under the firm name of Benton, Roberts & Brown.

In 1878 Colonel Benton became the attorney for the St. Anthony Falls Water Power Company, and thereafter continued in that relation and in charge of its important water power litigation until his death. In 1879 he was appointed city attorney of Minneapolis, holding the office until December, 1881, when he resigned. It was a period of rapid development in the city, and the city attorneyship assumed

peculiar importance. Many claims for damages for personal injuries were made against the city, but not a single judgment was obtained. The first controversy with a railroad company respecting the bridging of the tracks arose at this time, and was settled satisfactorily to the interests of the city. Upon his resignation Colonel Benton was appointed local attorney of the St. Paul, Minneapolis & Manitoba Railroad Company, upon an annual salary, but with liberty to engage in other practice. Upon the merging of that company into the Great Northern Railroad corporation, his employment was continued until his death. The labors of the position were varied and onerous, and withdrew him in a great measure from general practice. Representing in the chief city on its line one of the great railroad corporations of the northwest, he was called upon to investigate a vast number of claims for injuries to persons and property. When he was convinced that a claim was fraudulent or unjust, he brought all the resources of legal knowledge and professional skill to resist it; so that few adverse verdicts were ever rendered against the company during the period of his service. No department of legal practice requires so close discrimination as that pertaining to railroad litigation, and while the railroad attorney is called upon to argue the application of legal principles before the court, he almost invariably faces a jury that sympathizes with his opponent, but Colonel Benton not only retained the confidence of the bench, but with diplomatic skill often won verdicts from reluctant juries.

But it was not alone as a lawyer that Colonel Benton was distinguished. He had been, ever since he became identified with Minneapolis, one of her most public spirited citizens. He had served upon the board of trade and in various representative and consultative capacities. He was a forcible speaker and was ever ready to aid in any and all movements that were calculated for the city's good. He was a Mason. He was prominent as a member of the Grand Army of the Republic, of which he was judge advocate in the department of Minnesota for three years. He was a member of the military order of

the Loyal Legion, and at his death the commander of the Commandery of Minnesota. He died January 5, 1895.

### GEORGE L. OTIS.

Hon. George L. Otis, deceased, was born at Homer, Cortland county, New York, October 7, 1829. His parents were Isaac and Caroline (Curtiss) Otis. When a boy he moved with his parents to Barry county, Michigan, near Kalamazoo, where he completed his scholastic education, after which he taught school in Kalamazoo, devoting his leisure hours to the study of law in the office of Balch & De Yoe and Joseph Miller. In 1855 he was admitted to the bar at Kalamazoo, and in October of that year he removed to St. Paul, where he ever afterwards resided, engaging continuously in the practice of his profession until his death, which occurred March 29, 1883. In his profession he was recognized as one of the leading lawyers of the northwest, and a man of pleasant but quiet and unpretending demeanor. He readily won the confidence of his fellow men, and his uniform success in the conduct of his cases gained for him a large clientage.

If he excelled in one branch of his profession above another it was as a counselor, and in what lawyers term office practice, involving the investigation of cases, untangling and making plain intricate questions of law and solving difficult problems.

His fellow lawyer, the late Senator C. K. Davis, said of him in this regard: "The basis of his moral organization was integrity. It was stainless. No man ever questioned it. It was the faithful ally of his understanding which made it accurate and unswerving in those matters so frequent in our profession, where the practical rules of life as prescribed by laws should be made to coincide with the principles of abstract right."

Mr. Otis was a staunch democrat. His political convictions were like his other opinions and he was loyal to his party. In 1869, when he was chosen by the democrats to lead them to victory on the guber-

natorial ticket, Mr. Otis said in accepting the nomination: "It has been the rule of my life thus far to keep out of politics and to never seek a public office, and this nomination is tendered me unsought and entirely unexpected. No man can feel otherwise than complimented and honored when chosen to receive the suffrages of his party for the office of chief magistrate of his state. Still, were I to consult my own feelings I should plead private business and professional engagements as an excuse, and decline; but to the citizens of a free state there are other and higher duties than those merely personal to himself. Yielding to this demand, I accept the nomination, fully concurring with the views of the convention as expressed in its platform of principles. Let us keep in view the living wants of the present and progressive events of the age; then if we fail our failure will be temporary, and although in the present canvass we may not command success, we will do more—we will deserve it."

Mr. Otis was defeated by the Hon. Horace Austin, the republican candidate for governor.

For more than twenty years he was a member of Christ's Episcopal church, of St. Paul.

In 1858 Mr. Otis married Mary Virginia, daughter of Hon. Chas. E. Mix, to whom five children were born, namely, Caroline, wife of Capt. George D. Wallace; Martha E., wife of Lieut. W. M. Dickenson; Mary C., wife of W. F. Newell; Charles A. and George W. Otis.

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#### WILLIS EDWARD DODGE.

Willis Edward Dodge, general attorney of the Great Northern Railway Company, was born at Lowell, Vermont, May 11, 1857, the son of William B. Dodge, a farmer. On the paternal side he is descended from an English ancestor, who came to America in 1670. His education was begun in the public schools and completed at St. Johnsbury academy, Vermont. He began the study of law under Hon. Wm. W. Grout, recently a prominent member of congress, and

completed the course of study under Hon. F. W. Baldwin, both of Barton, Vermont. He was admitted to the bar in Orleans county, Vermont, in September, 1880.

The following month after his admission to practice Mr. Dodge moved to North Dakota, first stopping at Fargo, but subsequently locating at Jamestown. He was attorney for the Northern Pacific Railroad Company until in July, 1887, when he became the attorney for Dakota of the St. Paul, Minneapolis & Manitoba, and removed to Fargo. In 1890 he came to Minneapolis, still a special attorney for the Great Northern—formerly the "Manitoba"—although engaged in general practice. January 1, 1900, he was appointed general attorney of the Great Northern and removed to St. Paul, the location of the general offices of the company, and where he has since resided.

Colonel Dodge has attained distinction as a railroad and corporation lawyer, but he has a high reputation as a general practitioner.

He is not without experience in the political arena, for he lived in Dakota when it was a territory, and participated in the affairs which resulted in its division and the formation of the two states of North and South Dakota. While he resided in Jamestown he was elected to the Dakota legislature and served in the senate branch in 1886-7. In politics he has always been a republican.

While he lived at Jamestown he was the corporation attorney of the little city for eight years, and was thoroughly identified with its growth and in sympathy with its best interests.

Colonel Dodge's experience as a legislator, city attorney and politician in North Dakota has added to his strength and been of great service to him as a lawyer. He knows many things from actual contact and observation which every good lawyer needs to know. While, as has been said, his greatest prominence has been obtained in railroad litigation, his legal work, from first to last, has been that of the general practitioner.

Mr. Dodge was married in March, 1882, to Hattie M. Crist, of Vinton, Iowa, and they have two children, a son and a daughter.

## JOHN E. STRYKER.

Among the members of the Minnesota bar, who are rapidly taking their places in the front rank, stands John E. Stryker, of St. Paul. Mr. Stryker was born at Catskill, on the Hudson, in the state of New York, on the 30th day of October, 1862. His father was John L. Stryker, descended from one of the old Dutch families of New York, and his mother, Mary Edwards, came from the famous Jonathan Edwards family, of New England.

Though born in the east, Mr. Stryker very early in life became identified with the west. He first came to Minnesota as a boy in 1868, with his father, who then had large business and railroad interests here; and from that time his visits were of almost yearly occurrence until 1885, when he became a permanent resident of the state.

After a thorough preparatory course at Phillips Academy, at Andover, he entered Yale college, from which he graduated in 1883. His professional training was received at Columbia law school under the celebrated Dr. Theodore W. Dwight. After completing the course in that institution in 1885, he was at once admitted to the practice of his profession in the state of Minnesota. At this time, and before entering in earnest into practice, he concluded to round out his already broad and thorough education by travel and study abroad; and, accordingly, for a year and a half he traveled extensively in Europe and studied several branches of jurisprudence at the University of Berlin. Returning to Minnesota in the latter part of 1886, he at once began the active practice of his profession at St. Paul, and soon took the rank at the bar to which his natural abilities and thorough training entitled him. Since that time his practice has been large and general in all the state and federal courts; but of late years, while still engaged in general practice, he has made a specialty of equity cases in the federal courts, including patent, trade-mark and copyright suits, to which his early inclinations and training naturally predisposed him.

During the years 1893 and 1894 Mr. Stryker served as assistant United States attorney for the district of Minnesota; and during that



*John C. Stryker*



time had charge for the government of the important litigation growing out of the great railroad strikes of that time. He acquitted himself so well that when he resigned as district attorney, he was appointed special counsel for the United States in the notable case of the United States v. Pine River Logging and Improvement company. It was a case bitterly, stubbornly and ably contested by old and expert counsel, tried three times, three times appealed to the United States circuit court of appeals and once to the supreme court of the United States. The final result was a victory for Mr. Stryker and the collection by the government of \$104,000. Since that time he has been retained as special counsel by the government in other cases and by numerous manufacturing corporations in important patent and trade-mark suits.

Mr. Stryker has always been interested in, and ready to do his share for, the good of the profession, and has served successively as member of the executive committee, vice president and president of the Ramsey County Bar association.

Mr. Stryker was married December 4, 1889, at St. Paul, to Virginia L. Perrin, daughter of Col. Glover Perrin of the United States Army, and has an interesting family of five children, all born in St. Paul.

Though he has never sought public office, and, except as district attorney, has never held one, Mr. Stryker has always been a close student of, and keenly interested in, political affairs, as all citizens of his education and standing should be. Upon the fundamental ideas and doctrines of government, he has always been a democrat, and affiliated with the democratic party, though not as an extreme partisan. His temperament, education, character and patriotism are such that to him party success is a means rather than an end; and large questions involving the public good interest him more than mere party victories or personal advancement.

The professional growth of Mr. Stryker has not been forced; it has never been artificially stimulated by himself or anyone in his behalf. It has been, in keeping with his character, natural, steady and solid, based upon the personality, the attainments and the character of the man. Possessed already of a reasonable share of success and of a large

and varied experience of men and affairs, blessed with good health and a splendid physique, rich in natural endowment, and in a broad and thorough training, he is still a young man at the threshold of his career, which promises useful and important service to the profession and the state.

#### FRANK MELLEN NYE.

One of the best known names in the list of members of the Minnesota bar is Frank Mellen Nye. He was born March 7, 1852, at Shirley, Maine. His father was Franklin Nye and his mother's maiden name was Eliza M. Loring; and both were natives of Maine. In 1853 the family moved to Wisconsin and settled upon a farm near River Falls. His advantages for obtaining an education were limited and were confined at first to the country schools near his home. His ambition was to become a lawyer, and with that object in view, he determined to at least secure the best schooling to be had in his home locality. By teaching school part of the time he was able to take a course at the River Falls academy, and in the meantime pursued the study of law under the stimulant of a determination to excel in that profession. He was admitted to the bar at Hudson, Wisconsin, in 1878, and decided to locate in Polk county of that state. There he quickly attained recognition, was elected district attorney two terms, and in the fall of 1884 he was sent to the state legislature as representative from Polk county, and made the nominating speech of Hon. John C. Spooner, when first elected to the United States senate. At this time Mr. Nye realized that the field for his services in a country district were restricted, notwithstanding the success he had achieved. Therefore, in 1886, he moved to Minneapolis, where he has since resided, and where his abilities as a lawyer and an orator were quickly appreciated. Mr. Nye immediately became recognized as a political speaker of convincing oratory and rendered his political party (republican) service. Upon the election of Robert Jamison to the position of county attorney for Hennepin county, Mr. Nye was appointed his as-



*Frank M. Nye*



sistant; and in 1892 Mr. Nye was chosen county attorney, and in 1894 was re-elected to the same office. During his incumbency of the county attorneyship several criminal cases of such importance that they became of world-wide notoriety were prosecuted by him to conviction, and at once placed Mr. Nye in the front rank of those who make a study of criminal law. His success in the celebrated Hayward murder case and the unraveling of the intricate entanglements which characterized the details of the case against the Harris murderers, gave him immediate reputation throughout the northwest, and he was retained by North Dakota in the trial of Myron Kent for wife murder, where his standing was still further enhanced by success. Mr. Nye's success in civil cases has also been marked. He has repeatedly been urged, by his friends, to accept or strive for political preferment, but up to this time he has been too much absorbed in his professional work to indulge in political ambitions. In 1876 he was married to Miss Carrie M. Wilson, of River Falls, Wisconsin.

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#### GEN. H. W. CHILDS.

Henry Warren Childs, now senior member of the law firm of Childs, Edgerton & Wickwire, of St. Paul, and formerly, for six years, attorney general of Minnesota, was born in Onondaga county, New York, November 3, 1848. His father, Philander Childs, was a farmer in moderate circumstances, and General Childs' early years were spent on a farm, and in attendance at a country school during the winter terms. His education was completed in Cazenovia seminary, New York, where he finished a Latin-scientific course in 1871. After his graduation he was principal of an academy at Liverpool, New York, for about four years, and then was a teacher in a school at Syracuse. He studied law for five years in the office of Tousley & Bailey, of Syracuse, and was admitted to the bar in that city in 1881.

In the fall of 1883 General Childs visited Minnesota, but with no thought of making this state his home. However, he finally concluded, as a result of what he saw and experienced, to settle in the

North Star State. So he purchased property at Fergus Falls, built a house upon it, and before the next New Year's day was a permanent resident and at work in his profession. For about four years he practiced law at Fergus Falls with good success. In 1887 his neighbor and friend, Moses E. Clapp, then attorney general and now United States senator, appointed him assistant attorney general of the state. He accepted the appointment and removed to St. Paul, where he has since resided. For six years, or during the incumbency of General Clapp, he was assistant attorney general, and in January, 1893, became, by virtue of his election the previous November, attorney general himself. He was re-elected in 1894 and in 1896, and served in all six years, refusing another election.

While he was attorney general of the state he was most actively engaged. He attended faithfully and solely to his official duties, declining all retainers and outside business. It is but the truth to say that he did the state and its people great and valuable service. He was connected with so many important cases for the state, both civil and criminal, that they cannot well be enumerated. He assisted in the prosecution of William Rose for murder (a Redwood county case of much notoriety), and after three protracted and hard-fought trials the accused was convicted and executed. In the case of the State vs. Clifton Holden (another murder case, the victim being Frank Dodge, the accused's cousin), he represented the state at every step of a very protracted series of trials. The validity of the statutes of the state providing for solitary confinement and private executions was involved, and the question was submitted to both the state and federal courts and finally passed upon by the United States supreme court, and the law sustained.

The range of his official services in civil cases was most extensive. He was counsel for the state's wheat investigation committee; prosecuted the oil companies for their violations of law against certain decisions of the district court in their favor, and finally caused practically a reversion of the decisions and a favorable construction of the law, with the effect that the state treasury was enriched by large sums

collected from the defendant companies; he ousted from their positions several men illegally holding office; he prosecuted numerous corporations for their remissness of obligation and violation of law; he brought tax-evading corporations to book, etc., etc. To many his greatest official and professional achievement was the successful result of his action to enjoin the consolidation of the Great Northern and the Northern Pacific Railroad Companies, whose chief counsel was the late Senator C. K. Davis. In addition to his work in the courts he rendered a large number of official opinions which are still considered authoritative and constructive of the law.

After his retirement from the attorney general's office he engaged in general practice in St. Paul as a member of the firm heretofore named. The business of the firm is large and of a valuable character.

In January, 1883, General Childs married Albuta A. Hakes, of Onondaga county, New York, and one child, a son named James A. Childs, was born of the marriage.

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### JOHN BACHOP GILFILLAN.

John Bachop Gilfillan's ancestry is wholly Scotch, his paternal grandparents having emigrated from Balfour in 1794, and his maternal grandparents from Glasgow in 1795; both families settling in Caledonia county, Vermont. There, in the town of Barnet, Mr. Gilfillan was born February 11, 1835. When twelve years of age he entered the Caledonia academy to prepare for Dartmouth college, and in order to contribute to his own support he began, at the age of seventeen years, teaching in the local district schools. In the meantime his brother-in-law, Capt. John Martin, had settled at St. Anthony, and in 1855 Mr. Gilfillan visited him, expecting to return to Vermont and enter Dartmouth. But the attractions of the west were sufficient to induce him to accept a position as teacher in the growing town, and he did not return to his former home. His ambition was to become a lawyer, and he began reading with Nourse & Winthrop; following that with study in the office of Lawrence & Lochren. He was

admitted to the bar in 1860, and at once formed a partnership with J. R. Lawrence. Mr. Lawrence, however, entered the army, and Mr. Gilfillan then practiced alone until 1871, when the firm of Lochren, McNair & Gilfillan was formed.

The firm was subsequently dissolved by the appointment of Judge Lochren to the district bench, and the death of Mr. McNair in 1885. Notwithstanding that Mr. Gilfillan has long enjoyed a large share of the most important law practice in Minnesota, yet he has always found time to take a very active interest in public affairs, especially as they pertain to educational matters. Indeed, the advancement of educational facilities in the community in which he has lived has seemed to be of greater moment to him than even his personal advancement in either the law, politics or wealth. He helped to organize the Mechanics' Institute for Literary Culture in St. Anthony in 1859, and framed the bill for the organization of the St. Anthony school board under which the graded school system began, and served as a director on the board for nearly ten years. He was appointed regent of the state university in 1880, and for eight years he gave much of his time and thought to the requirements of the position. Mr. Gilfillan's political career has been long and of acknowledged service in county, state and national affairs.

Soon after he was admitted to the bar he became city attorney of St. Anthony, and within three years from his admission to practice he was elected county attorney of Hennepin county; his service as county attorney extending from 1863 to 1867; again from 1869 to 1871; and again from 1873 to 1875. In that year (1875) he was elected to the state senate, and served continuously for ten years. During this period he was the originator or advocate of measures that have been of great influence upon the development of the state of Minnesota and the well being of its citizens. He was instrumental in securing legislation that provided for the adjustment of the state railroad bonds, and was chairman of the senate committee on tax laws that compiled the laws into a code that constitutes the chief revenue system of the state.

Mr. Gilfillan's service in the state legislature was appreciated, and his constituents decided that he should represent his district (then including both Minneapolis and St. Paul) in congress; and he was elected in 1884. When his term ended Mr. Gilfillan took well-earned rest and recreation by visiting, with his family, in Europe, spending nearly two years and a half on the continent. He then returned to the practice of his profession, and recently has had further responsibilities placed upon him by having been elected in January, 1903, to the very important position of president of the First National bank of Minneapolis. Mr. Gilfillan has been twice married. In 1870 he was married to Miss Rebecca C. Oliphant, of Fayette county, Pennsylvania, who died March 25, 1884. In June, 1893, he was again married, the bride being Miss Lavinia Coppock, of Washington, D. C.

#### GEN. JOHN B. SANBORN.

John Benjamin Sanborn, of St. Paul, the renowned lawyer and distinguished soldier of Minnesota, was born at Epsom, Merrimac county, New Hampshire, December 5, 1826, and belongs to one of the oldest and most prominent New England families. He was educated in the common school of his native village, and at Pembroke academy, New Hampshire, Thetford academy, Vermont, and Dartmouth college. He had prepared for a thorough collegiate course, but on the advice of his personal friend, President Franklin Pierce, concluded to study law and prepare for the bar; and he therefore pursued a thorough course of instruction under Hon. Asa Fowler, of Concord, New Hampshire. He was admitted to the bar at Concord, at the June term of the superior court, 1854.

December 21, 1854, General Sanborn came to Minnesota, then a territory but five years old, and located in St. Paul, which has practically ever since been his home, the principal field of his success as a lawyer and the present field of his active labors. During nearly all of his professional life he has had a business associate. A few days after his arrival in St. Paul, on January 1, 1855, he formed a partnership with

Theodore French, under the firm name of Sanborn & French. By subsequent admissions and retirements his firm became Sanborn, French & (Charles C.) Lund, from January 1, 1857, to February 22, 1860; Sanborn & Lund from February 22, 1860, to January 1, 1862, when he entered the Union army; Sanborn & (Charles) King, in Washington, D. C., from July 1, 1866, to July 1, 1878; John B. and Walter H. Sanborn, from January 1, 1871, to April 1, 1892, when Walter H. Sanborn was appointed United States circuit judge, and John B. & Edward P. Sanborn since April 1, 1892. The firm is licensed to practice in all the Minnesota courts, in all United States district and circuit courts, in the United States court of claims, and in the United States supreme court. General Sanborn has always had an important practice, and at present is special counsel for the Northern Pacific Railway; the St. Paul, Stillwater & Taylor's Falls Railroad Company; Lindeke, Warner & Schurmeier; German-American bank; National German-American bank; P. H. Kelly & Co., and other firms and associations. In 1884 he was strongly urged upon by President Arthur for judge of the United States circuit court for the eighth circuit, but geographical location controlled the appointment, which went to Judge Brewer, of Kansas.

General Sanborn has had a very large and varied practice, extending over a period of nearly fifty years and involving almost the entire range of jurisprudence. He came to Minnesota in pioneer days when the tribunals were primitive, and he has practiced before justices of the peace and in the supreme court of the United States and in the court of claims, where vast interests were involved. He has been the attorney for white men and Indians, for large railway corporations and the humblest of his fellow men. He was counsel in the noted and leading cases of the Northern Pacific Railway Company vs. Mary Bardon, the same company vs. the St. Paul & Pacific Railway Co.; Will, Stack & Co. vs. Truitt Bros & Co., and many others. He has been successful far beyond the average, and is still actively engaged, with many more years of an honorable and prominent career before him. He has ever been in sympathy with his profession and always eager for

its upbuilding and the advancement of its general interests, and has always been a member of the county and state bar associations and at different periods held positions in them.

As a citizen of St. Paul and Minnesota, no other man has been more public spirited or more generally useful than General Sanborn. He has always been in sympathy with every important project for the development of the state, and actively interested in everything for the general welfare of St. Paul. He has been since its organization a member of the city's chamber of commerce, was for several years its president and always prominent and active in its affairs.

He has rendered frequent and conspicuous service in the legislative councils of the state. As early as in the session of the legislature in 1859 he was chairman of the judiciary committee of the house. In 1860 he was elected to the state senate, and in the session of 1861, when the war of the rebellion was portending, he was chairman of the military committee. At the same session he was before the republican caucus for United States senator, and was defeated by Hon. Morton S. Wilkinson by only one vote. In 1890 and again in 1892 he was elected without opposition to the state senate and served four years.

During the war of the rebellion General Sanborn was most actively engaged and rose to great prominence and distinction. He was appointed adjutant general of the state in April, 1861, and superintended the organization and sending to the field of the first five regiments of Minnesota infantry, two batteries and four companies of cavalry. In December, 1861, he was commissioned colonel of the Fourth Minnesota Infantry, and in the following spring was sent with his regiment to the seat of war in Tennessee.

General Sanborn's military service and distinction may here be only epitomized. He was promoted from colonel successively to brigadier general and brevet major general. In 1862 he commanded a demi-brigade in the siege of Corinth, Mississippi; a brigade in the battle of Iuka; his regiment in the first day's battle of Corinth, October 3, and a brigade in the second day's battle; a brigade on the Central

Mississippi expedition in November and December. In 1863 he led a brigade on the Yazoo Pass expedition, in March; a division from Helena, Arkansas, to Port Gibson, Mississippi, and in the battle of Port Gibson; a brigade in the battles of Raymond, Jackson, Champion Hills and in the assault on and siege of Vicksburg; in September was sent to command the district of Southwest Missouri and Northwest Arkansas. In the fall of 1864, during the invasion of Missouri by the confederate forces under General Price, he commanded a division of cavalry in the defense of Jefferson City, and a brigade in the battles of Jefferson City, Boonville, Independence, Big Blue, Marais des Cygnes, Mine Creek and Newtoma. In July, 1865, at the head of 6,000 troops, he made an expedition to Colorado to open lines of travel to Colorado and New Mexico and operate against hostile Indians, and was a member of the commission that negotiated a treaty with the Indians. In November following, as United States commissioner, he settled the differences between the loyal and disloyal tribes of the Indian Territory and established amicable relations between the ex-slaves of the territory and their former Indian masters. In all he was United States commissioner to the Indian tribes for three years. He was mustered out of the service as major general by brevet in June, 1866, and, returning to St. Paul, resumed his law practice, at the same time establishing the law firm in Washington of Sanborn & King.

General Sanborn has been married three times. In 1880 he married his present wife, who was Rachel R. Rice, a daughter of the late Hon. Edmund Rice, of St. Paul, and of this marriage there are four children, viz., Lucy S., John, Rachel R., and Frederick Sanborn.

#### LARDNER BOSTWICK.

The name of Bostwick is of Saxon origin, traceable to the time of Edward the Confessor, who preceded Harold, the last of the Saxon kings, upon the throne of England.

The records—Stratford, Connecticut, and of Long Island, New York—impart the information that the Bostwicks emigrated to America from Cheshire, England, in 1643, and made their home at Stratford, Connecticut.

The fifth descendant, Sir Warren Bostwick, married Hawise, Countess of Lincoln, widow of Roger-de-Quenci, and daughter of Hugh Kevelock, Earl of Chester (1156).

Lardner Bostwick, the subject of this illustrious ancestry, whose coat of arms was "*Semper Presto Servire*" (*Always Ready to Serve*) was the son of John Bostwick, born in Kent county, Maryland, who was born in Toronto, Canada, June 20, 1815, and died in Minneapolis, Minnesota, April 12, 1897, aged 82 years.

Judge Bostwick was married in Toronto March 6, 1843, to Eliza Kennedy, and the same year removed to Chicago, and in 1850 to St. Anthony's Falls. Two of their four daughters are living, Mrs. Frank G. O'Brien, Minneapolis, and Mrs. H. A. Nott, Avon, New York.

When St. Anthony became a city, in 1855, Lardner Bostwick was elected city justice, and held that office for many years. He was a man of unusual mental power, good literary attainments, with a fair knowledge of the law, and withal of spotless integrity and commanding dignity in court, while very congenial and companionable with members of the bar and others. He was also fourth judge of probate of Hennepin county, also court commissioner. He served as United States assessor of internal revenue from 1862 to 1866.

In 1871 Judge Bostwick, having acquired a competency, decided to retire from the activities of business life and enjoy the fruits of his labor.

The Judge never identified himself with any religious denomination, but kept in close touch with nature, taking much pleasure in riding through the woods, watching the herds, the flight of birds and entering into the sports of his grandchildren with a zest of one much younger in years. His charitable deeds will never be fully known, as he was extremely modest—never letting his left hand know what he was bestowing with his right.

Judge Lardner Bostwick passed to the other life, leaving a memory which will be ever cherished by not only his near and dear relations, but by the many with whom he daily associated and was beloved.

#### AMBROSE N. MERRICK.

Ambrose Newell Merrick, deceased, was identified with the Minneapolis bar for over thirty years, and during that time he so endeared himself to the hearts of the citizens of his adopted city, by his many good traits of character and as a lawyer, that his demise, which occurred April 28, 1901, was a sincere regret by all who knew him.

Mr. Merrick was born in Brimfield, Massachusetts, February 9, 1827, and came of Puritan stock. His father was Ruel Merrick, also a native of Brimfield, who died when Ambrose was about three years of age. His education was obtained at the district schools and the Westfield academy and Williston seminary, where he prepared for college. He entered Williams college in the sophomore year and graduated in 1850. The next four years he engaged in farming and found some time to study law. In 1855 he entered the office of Hon. George Ashmun, of Springfield, Massachusetts, where he remained until admitted to the bar, in 1857. After his graduation he located in Springfield, where for ten years he practiced his profession and devoted some time to politics, and served several years on the executive committee of the republican state central committee of Massachusetts.

In 1867 Mr. Merrick went to California, and settled in Los Angeles, where he practiced for two years. He later went to Seattle, Washington, and, with his associates, opened the first coal mine on Puget Sound.

In 1871 Mr. Merrick located in Minneapolis, and the following year, when St. Anthony and Minneapolis were consolidated, he became the first city attorney. He held that office for three consecutive terms. He is credited with being one of the originators of the present municipal court.

From 1873 to 1875 he was in partnership with the late H. G. O. Morrison, under the firm name of Merrick & Morrison.

During his long term at the Minneapolis bar he was remarkably successful, and one of the most important cases which he successfully won was the case involving the constitutionality of the insolvent law of 1881, of this state, which was carried through the state courts by him, and on appeal to the supreme court of the United States Mr. Merrick's contention was sustained and the act declared constitutional.

Politically Mr. Merrick was an old line whig by education, having cast his first vote for Taylor and Fillmore, but later joined the ranks of the republican party, and always took an active part in behalf of his party candidate.

In 1858 Mr. Merrick was married to Sarah B. Warriner, of Springfield, Massachusetts, to whom eight children were born. The two sons, Louis A. and Harry H., constitute the law firm of Merrick & Merrick, with offices in the Lumber Exchange, Minneapolis.

#### ELL TORRANCE.

Of the members of the bar of Minnesota probably no individual is better or more favorably known throughout the entire United States than Ell Torrance, of Minneapolis. Wherever veteran soldiers of the civil war congregate, be they federal or confederate, there the name of Ell Torrance is distinguished and honored.

Before Judge Torrance was a man in years, even before he was of legitimate military age, he was fighting in the severest battles of the civil war; and his record is that of service from a private in the ranks to one of the proudest positions in American history, that of commander-in-chief of the Grand Army of the Republic.

Judge Torrance was born at New Alexandria, Pennsylvania, May 16, 1844, son of Rev. Adam Torrance, D. D., and Eliza (Graham) Torrance. He was educated at Eldersridge academy, Pennsylvania, and upon the breaking out of the war he enlisted, although but seventeen years of age, June 26, 1861, as a private in Company A, Ninth

Pennsylvania Reserves. He served in all the battles in which his regiment fought (except when disabled by wounds), and was discharged with his regiment at Pittsburgh, May 11, 1864. But the war was not yet finished, and he re-entered the service July 9, 1864, as second lieutenant of Company A, One Hundred and Ninety-third Regiment Pennsylvania volunteer infantry. With that regiment he served until the close of the war and was mustered out June 17, 1865. Among special service may be mentioned that he guarded the body of President Lincoln when it lay in state at Baltimore.

What may be termed the military record of Judge Torrance did not end with the close of the civil war. He was a charter member of the celebrated John A. Rawlins Post, G. A. R., Minneapolis; was commander of the Department of Minnesota for 1895; and was Commander-in-chief of the Grand Army of the Republic, 1901-2. He is a member of the Minnesota Commandery of the Loyal Legion; the Minnesota Society Colonial Wars; Minnesota Society S. A. R., and a life member of the Society of the Army of the Potomac. Mr. Torrance is also a trustee of the McKinley National Memorial association; and was a delegate to the republican national convention in 1896. At this time he is a member of the board of directors of the State Normal School board.

When Judge Torrance became commander-in-chief of the Grand Army of the Republic one of his endeavors was in line with the best thought of the best element among the veterans of the war, and he issued the following address, which is representative of the true feeling of those who have born the brunt of actual battle, and which has made his name honored along all lines of valor, whether they wore the blue or the gray:

"HEADQUARTERS GRAND ARMY OF THE REPUBLIC,  
Minneapolis, Minn., Sept. 1st, 1902.

*"To the Members of the Grand Army of the Republic:*

"In April last I visited the Departments of Georgia, Alabama, Louisiana and Mississippi, and Texas.

"My visit was in every respect a delightful one, but most gratifying of all was the cordial good feeling I found existing between the Union and Confederate soldiers. I affirm without hesitation that among the best friends of our comrades in the South are the surviving ex-Confederates. This friendship is based upon the mutual respect which one good soldier has for another, and had it not been for the bronze button I would often have been unable to distinguish between the blue and the grey, for the cordial welcome extended by the one was equaled by the generous hospitality proffered by the other. In all my journey I found no sectional lines, sullen faces or closed doors. One marked contrast, however, distinguishes the surviving soldiers of the two armies. The National government has properly made generous provision for her defenders, but whatever aid the ex-Confederates receive must come from their more fortunate comrades, or from the municipalities in which they reside; and while the people of the South have in a spirit worthy of the highest praise done much to relieve their necessities, the 'nation's wounds' have not yet been fully bound.

"At the close of the war the Southern people were too impoverished to make adequate provision for those who suffered from disease and wounds, and the result was that many a Confederate soldier ended his days in the almshouse and was buried in a pauper's grave.

"When at Montgomery it was my pleasure to meet Col. J. M. Falkner, District Attorney for Alabama, formerly an officer in the Eighth Confederate Cavalry, who for some time past has been earnestly directing his efforts toward the erection of a Confederate Home at Mountain Creek, Chilton County, Alabama. The erection of the first cottage was commenced April 7th last on forty acres of land donated by Colonel Falkner, and to-day two comfortable cottages have been completed, which shelter 17 old Confederate soldiers, not one of whom could earn a living in a land of plenty against the competition of a child.

"The plan is to build 40 of these cottages, that many or more being required to accommodate those whose disabilities are total. My purpose in writing this letter, and it is the last one I shall address to you as Commander-in-Chief, is to afford the members of the Grand Army of the Republic, individually or as Posts, an opportunity to contribute to the shelter of these needy veterans. The dignity of their demeanor and the uncomplaining, soldierly way in which they bear suffering and privation, render them worthy of our respect and sympathy, and it becomes a privilege to assist in making their last days comfortable.

"I know of no surer or shorter way to a complete unification of this country in purpose and feeling than the highway of kindness, and I believe its extreme outposts should be jointly held by the surviving soldiers of the armies of Grant and Lee.

"There was a time when the nearer we came together the worse it was for all, but now the closer we come together the better for all.

"The old order 'to kill' has given place to the gentler command 'to make alive,' and for the bitter contest forever ended at Appomatox has been substituted a perpetual contest of goodwill and patriotic devotion to a common country. I believe it is within the power of the surviving soldiers of the great war to make fraternity a national anthem, loyalty a national creed and charity a national virtue.

"My comrades, as we grow older our hearts become more gentle and tender and next to the comrade who stood by our side is the brave soldier who faced us.

"Contributions should be forwarded to Col. J. M. Falkner, Montgomery, Ala., who will acknowledge receipt and gladly furnish such additional information as may be desired.

"Fraternally yours,

"ELL TORRANCE,

"Commander-in-Chief,

"Grand Army of the Republic."

Soon after the war, Judge Torrance began the study of law in Pittsburgh, with White & Slagle, and was admitted to practice in 1867. In October, 1868, he moved to Brookfield, Missouri, and his first partnership was with Samuel P. Huston. He was elected probate judge of Linn county, Missouri, in 1870, and served in that capacity four years. He was then elected city attorney of Brookfield and served two years. In 1881 he came to Minneapolis and for five years was in partnership with George H. Fletcher, who had read law under Judge Torrance's direction. In 1890 the firm of Rea, Miller & Torrance was formed. For the past ten years he has practiced alone, and he has built up a large and lucrative general practice, and has also handled many estates. For the past ten years he has been the attorney of the Hennepin County Savings bank, of Minneapolis.

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*David A. Secor* \*

Judge Torrance was married to Anna Mary Macfarlane, September 22, 1868, and five children and three grandchildren have been born. The children are Graham M. Torrance, a lawyer at Bemidji; Charles M. Torrance, a dentist at Frankfort-on-the-Main, Germany; Alice V., wife of Douglass A. Fiske; Hester May, at school in Boston, Massachusetts; and Eli Torrance, Jr., with the Illinois Steel Co., of Chicago.

#### DAVID ADAM SECOMBE.

David Adam Secombe, a pioneer resident of Minneapolis, the oldest member in continuous practice at the time of his death, which occurred March 18, 1892, was born at Wilford, New Hampshire, May 25, 1827. He was of English descent, the Secombe family coming from the west of England and settling at Lynn, Massachusetts, in 1660.

David A. Secombe received his education at the public schools of his native town, and later fitted for college at the academies of Hancock and Pembroke, in that state. He entered Dartmouth college in 1847, when but twenty years of age. However, he did not graduate, remaining with his class but three years, when he left college and went to Manchester, to enter upon the study of law. He began his studies in the office of Hon. Daniel Clark, an ex-United States senator, and later United States district judge.

In 1851, Mr. Secombe came to Minnesota, and took up his residence in St. Anthony, where he had decided to make his home, and enter into the practice of his profession. The following year he was admitted to the Hennepin county bar, and for forty years was a member of that bar, and practiced alone, with the exception of about three years shortly after his admission, when he was in partnership with John W. North, and in later years he associated himself for a short time with Byron W. Sutherlands.

For several years after his coming to Minneapolis, Mr. Secombe took quite an active part in the politics of the territory and the new state. He was a member of the state constitutional committee that met in St. Paul in 1857, and a representative from Hennepin county in the legislature of 1859-60. He was also a delegate to the republican

national convention of the latter year, which met in Chicago and nominated Lincoln for president.

Mr. Secombe was county attorney of Hennepin county in 1871-72, succeeding John B. Gilfillan. About this time he lost all interest in political matters, when the machine-made politics took the place of honest legislation; for it was not to his liking and he politely withdrew, having no desire to adapt himself to the changed conditions.

As before stated, Mr. Secombe was identified with the Hennepin county bar for more than forty years, and during that time he held the esteem of the bench and admiration of his brother lawyers. In argument he was logical, forcible and firm, and if he was right no pressure could change his convictions. He was not easily understood, even by some of his most intimate friends; and by some he was considered obdurate, and they thought that he maintained a desire to "stand alone," so to speak, but this was not true. His peculiarities of temperament, his strong, unbending will, and vigorous independence of opinion and character, came to him by honest inheritance. He was a perfect type of that firm and unyielding Puritan blood from which he was so directly descended. True to all the highest and best qualities of the ancient Puritan, he was possessed of a quick and sensitive conscience, whose dictates he followed to the bitter end, wholly regardless of consequences. He was strong and vigorous in debate, keen and logical in argument, thoroughly honest and uncorruptible. He was courteous and dignified with everyone, and was recognized as one of the brightest and ablest lawyers of the state.

The Hennepin County Bar association passed the following tribute to the memory of Mr. Secombe:

"We, the members of the Hennepin County Bar, deem it proper and appropriate that we should place upon record an expression of our sense of the great loss to ourselves and to our profession caused by the death of Hon. David A. Secombe, which occurred on the 18th day of this month.

"For more than forty years he has been a resident of this city, actively engaged in the successful practice of the law. He had em-

phatically what is called a legal mind; his marvelous instinct as to what the law ought to be doubtless saved him much labor, which was necessary to those less intellectually great. With the principles of the science he was familiar; with their resources he was scarcely less so. He was not a 'case' lawyer, hunting for cases and then for principles; but he first determined the principles and then offered the cases as illustrations. He never mistook the grooves and rules of the law for the law itself. He looked at the law from above and not from below, and did not cite precedent where citation was not necessary.

"He stood among the brightest and ablest lawyers of the state. His integrity was never questioned, he was kind and courteous towards his brethren, although his keen sarcasm and brilliant repartee oftentimes, to those who did not know him well, made him appear otherwise. He never burdened the trial of his cases with immaterial matter, he endeavored to determine in his own mind, like a great general upon the eve of battle, where the real fight was coming, where the day might be lost or won, and then to this point he centered all his skill and strength.

"In the statement of a legal proposition or of the facts in a case he was certainly a master, not surpassed by any one in his profession. His arguments were always clear, concise and logical; no matter how much the court might differ with him, he always commanded its undivided attention.

"He was always self-reliant and self-possessed, and impressed one as having a wonderful amount of reserve power. He was never in a hurry and never did anything in a hurry. He was dignified and polite under all circumstances, never forgetting that he was a gentleman.

"But he has been called before the bar of another tribunal to answer for his life here on earth. We shall all miss him, for he was admired, respected and beloved by us all.

"We respectfully ask that this, our brief expression of regard for our honored brother, may be entered upon the records of the court.

"W. E. HALE,

"J. B. GILFILLAN,

"J. M. SHAW,

"FRANK HEALY,

"ELL TORRANCE.

"Minneapolis, Minn., March 26, 1892."

Mr. Secombe is survived by his wife and three children. Mrs. Secombe was Miss Charlotte A. Eaton, of Conway, N. H. She and Mrs. John Delaittre are sisters. The daughter is the wife of Edward Chatfield, a well known attorney, of Minneapolis; the other two children are William and Frank Secombe.

#### W. H. NORRIS.

William Henry Norris was born at Hallowell, Maine, July 24, 1832. His father was Rev. William Henry Norris, a Methodist clergyman for fifty years, who died in 1878. Mr. Norris comes from a family of Irish farmers who settled in New Hampshire about 1750. He attended no school until fifteen years of age, receiving his early education at the hands of his father. Later he attended Dwight's high school in Brooklyn and in 1854 graduated from Yale as valedictorian of his class. While he was in college he was a member of Linonia, Alpha Delta Phi and Phi Beta Kappa societies. Subsequently he taught school and took part of his law course at Harvard.

A year later he came west and settled in Green Bay, Wisconsin; continued his legal studies in the office of James H. Howe, and in 1857 was admitted to the bar and remained with Mr. Howe until 1862. The following ten years he was engaged alone in practice. He subsequently associated himself with Thomas B. Chynoweth and E. H. Ellis for six years. Twenty-three years were spent in the practice of law at Green Bay. During the greater part of this time Mr. Norris was local attorney for the Chicago & Northwestern Railroad company, and for six years attorney for the Green Bay & Minnesota Railroad company, now the Green Bay & Western. These engagements led him to make a specialty of railroad law.

He removed to Minneapolis in 1880 and opened an office for general practice. In January, 1882, he was selected by the Chicago, Milwaukee & St. Paul Railroad company as its state solicitor. In his trials of claims and all his practice in behalf of his railroad clients he has met with a marked degree of success, having, in several cases,



*W. H. Norris*



advised his clients to disregard acts of the legislature as unconstitutional, contentions upon which the court has only ruled in his favor.

In politics he is a republican, but does not always vote the entire ticket selected by his party. He is a member of the Masonic order and a member of the Plymouth Congregational church.

Mr. Norris was married at Green Bay in 1859 to Hannah B. Harriman, daughter of Joab Harriman, a shipbuilder of Waterville, Maine. They have three children, Louise, wife of Alfred D. Rider of Kansas City; Georgia and Harriman.

#### DANIEL W. LAWLER.

Daniel William Lawler was born at Prairie du Chien, Wisconsin, March 28, 1859. His family is one of the oldest and most prominent in the northwest. His father, the late Gen. John Lawler, was for years a leading citizen of southern Wisconsin. He was one of the projectors of the enterprise to build one of the first bridges across the Mississippi, and was a well known public character, a man of honor, distinction and usefulness, and the son is worthy of the sire. Mr. Lawler was carefully trained to be of use in the world. His early education was received in private schools and completed at Georgetown college, District of Columbia, from which justly celebrated institution he graduated "with honors," receiving the degree of M. A. He then pursued a thorough course of study in the Yale college law school, was graduated therefrom, and at its hands has received the degrees of LL. B. and M. L. He came to St. Paul in 1884, and began the practice of his chosen profession. From the first he was successful, and soon attained to prominence and distinction. In 1886 he was appointed United States district attorney, and held the position two years, resigning in 1888. In March, 1891, he was elected by the common council of St. Paul corporation attorney, and served one term of two years. Meanwhile he had been active in politics as a democrat, had rendered many services to his party, and had become very popular in its councils. In 1892

his party honored him by nominating him as its candidate for governor. He accepted and made a brilliant canvass, his eloquent addresses at various points in the state establishing his reputation as a public speaker second to none in the northwest. With the overwhelming odds against him, he did not expect an election, and when he received several thousand more votes than did his ticket as a whole, he was entirely satisfied. It was during a late canvass of the state that he coined the expression now so common in political parlance: "I am no man's man and wear no man's collar." In 1896 he was chosen the member of the national democratic committee from Minnesota, but by reason of his opposition to Mr. Bryan and the Chicago platform, refused to qualify for the position. In 1893 he became chief counsel of the legal department of the Chicago Great Western railway, which position he still holds. Though he is no longer a politician in active service, Mr. Lawler has not lost his interest in political matters, and especially in political campaigns. In the presidential campaign of 1896 he was opposed to the platform of the democrats made at Chicago, and was what was termed a "gold democrat," taking a somewhat active part in behalf of the Palmer and Buckner ticket. Of Mr. Lawler's forensic abilities, one of his associates at the bar, a political opponent but a personal friend, says:

"Daniel W. Lawler is one of the most polished and best equipped orators in the west. As a political speaker he has no peer in his party in the state. If any man could persuade me to be a democrat, I think he could. As an advocate before a jury he has few equals. He is always earnest—and eloquence is but earnestness given expression—so that he is always eloquent, whether addressing a jury of twelve men on the subject of a common lawsuit or a vast concourse upon the leading public questions of the day. Personally he is universally popular wherever known. I remember that when he was a candidate for governor he ran very largely ahead of his ticket here in St. Paul, where he was largely known."

In 1886 Mr. Lawler married Miss Elizabeth O'Leary, daughter of the late Hon. John J. O'Leary, a prominent citizen and business man

of St. Paul. To them have been born three children, two of whom, named respectively, Samuel Fahnestock and Margaret Elizabeth Lawler, are living. A son, named John Daniel Lawler, died in infancy.

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### THOMAS SIMPSON.

Thomas Simpson, a prominent member of the bar of Winona, Minnesota, was born in the north of England, May 31, 1836, the son of Anthony and Elizabeth (Bonson) Simpson. He is descended from Scotch ancestry, though his father and father's father were born on English soil. His maternal grandfather, Robert Bonson, was a doctor by profession; but both grandfathers were interested in mining; Nathan Simpson in the mother county, while Robert Bonson, who visited America in 1825 and remained here for several years, did some pioneering in our mining industry, founding the first lead furnace at Galena, Illinois, and also the first at Dubuque, Iowa. Anthony Simpson—son of Nathan—as a young man superintended the English lead mine at Swaledale, Yorkshire. About 1837, and while the subject of this sketch was an infant, he brought his family to America and settled in Dubuque, Iowa. There he became engaged in the mining and smelting business, at the same time conducting the farm upon which he lived, and where he died in 1866, his wife surviving him until 1871. While in England, Anthony and Elizabeth Simpson had been members of the Wesleyan church. In America they identified themselves with the Methodist Episcopal church, in the official activities of which Anthony long took a leading part. He was much respected as an upright and responsible citizen, and was early drawn into prominence in secular as well as religious affairs. His son Thomas, to whose life and achievements this sketch will now confine itself, was one of ten children, six of whom are still living. Thomas grew up in Dubuque, attending school and assisting as his age and strength permitted in the farm work and the mining and smelting. His public school education was but a foundation for the diversified practical knowledge acquired by his studious mind. He indulged an early bent for both civil engineer-

ing and legal study, and in the former took a course of training from the Rev. E. S. Norris, a clergyman of distinction, who had at a former period been state surveyor of Maine. His studies were completed in 1852, and in the following year, Mr. Norris having received from the United States surveyor general at Dubuque the contract for running the guide meridians and standard parallels—the basal lines for government survey of Minnesota territory,—he engaged young Simpson to accompany him as one of his corps of assistants. Soon discovering that his ex-pupil, though but seventeen, was competent to take charge of the work, he turned it over to our subject, who carried it on to its completion in 1855. This work is on record in the Office of the United States surveyor general at St. Paul. In this connection it may be stated that in December, 1860, Mr. Simpson read before the Minnesota Historical society, at St. Paul, a paper prepared by him on "The History of the Early Government Land Survey in Minnesota West of the Mississippi River." The reading was listened to with intense interest, and the paper, which was recognized as a most valuable contribution of data to the early history of the state, will be published by the historical society. Shortly after completing his surveying task, in 1855, Mr. Simpson was commissioned by the government to go to Green Bay, Wisconsin, to determine the boundaries of the Menominee Indian reservation, with a view to protecting the Indians in their timber and lumber rights. Since the beginning of 1856 Mr. Simpson has been a resident of Winona. For the first few years after locating here he was engaged in real estate and loan operations; but his previously acquired knowledge of law had not been forgotten, nor his legal admission to the bar of Minnesota, and he has since been in active and successful practice. During this time he has been a member in two law partnerships; the first with Judge Abner Lewis, which was dissolved in 1864, and the second with George P. Wilson, who was subsequently elected attorney general of the state. Mr. Simpson's political tenets are republican, and he has been made the incumbent of various public offices. Shortly after becoming of age he was elected justice of peace in the city of Winona. After his two years' term of service, he was

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*W. D. Turner*

made secretary of the consolidated school districts of the city. He has served three terms as alderman, and was the first president of the city board of education. In 1864, he was appointed on the normal school board of Minnesota, and retained his membership for twenty years, serving during a large portion of that period as president of the board. In 1866, he was elected to the state senate, and his record as a member of the general assembly is an honorable one. Throughout his mature life he has been a communicant of the Methodist Episcopal church. He was superintendent of the Sunday school of the Central Methodist church of Winona from 1856 to 1892, and has rendered a variety of important official services to the church. Mr. Simpson was married October 30, 1860, to Isabella Margaret Holstein, a Pennsylvania lady. Three sons were the fruit of their union—George T., James K. and Earl. Mrs. Simpson died December 21, 1888. The development of Mr. Simpson's career has been intimately associated with that of this city and his state. When he settled in Minnesota its population was sparse, probably less than six thousand, and, taking at once the attitude of a wideawake citizen, with the good of his community at heart, he came rapidly into touch with varied phases of its industry and progress. He has been prominent in promoting the manufacturing interests of Winona; was among the organizers of the Second National bank, and for many years served as its president; contributed strongly to the forces which established the Winona & Western railroad, and is now secretary and general counsel of the company. He has controlled extensive landed interests in the state, and is counted among the substantial and leading men of southern Minnesota.

#### MARCUS D. GROVER.

Marcus D. Grover, of St. Paul, general solicitor of the Great Northern Railway Company, is a native of Vermont, born at Wells, Rutland county, near the western boundary of the state, and is descended from old New England families. He was educated in the public schools of

his native town and at Troy Conference academy, Poultney, Vermont.

Mr. Grover's legal education was begun as a student in the office of Hon. D. E. Nicholson, at Wallingford, Vermont; subsequently he was in the office of Tremain & Peckham, at Albany, New York. He was admitted to practice in the Vermont courts of Rutland county and to the New York bar at Schenectady, in September, 1868. His first experience as a practicing attorney was while he was in the office of M. P. Morton, of Troy, New York, during the winter of 1868-9. In the following May he formed a partnership with Hon. R. C. Betts, at Granville, Washington county, New York. His partner was at the time district attorney for the county, but for some months was in ill health, and Mr. Grover was acting prosecuting attorney for the county, although he was an actual resident of Vermont, his home town of Wells being but three miles from Granville. While in partnership with Mr. Betts Mr. Grover was for four years a member of the Vermont legislature, in which body he was for three years chairman of the committee on corporations. In January, 1874, his partnership with Mr. Betts was dissolved and he became a member of the firm of Waldo, Tobey & Grover, at Port Henry, Essex county, New York. In May, 1878, Mr. Tobey died, and the firm became Waldo & Grover, and so continued until 1887, when Mr. Grover withdrew and came to St. Paul as assistant to Hon. W. E. Smith, who at the time was general solicitor of the St. Paul, Minneapolis & Manitoba Railway Company. Owing to his failing health Mr. Smith was compelled to resign, and on the 1st of January, 1888, Mr. Grover became his successor.

In 1890 the Great Northern Railway Company leased the line of the St. Paul, Minneapolis & Manitoba for a long term of years, and Mr. Grover became general solicitor of the Great Northern and its proprietary lines, which position he has since held. The legal affairs of the great corporation, with which Mr. Grover is connected, are as large and as important, in many respects, as those of many a state, and require for their intelligent conduct qualities of a very high character. They





*M. D. Munro*

cover almost the entire field of jurisprudence and give rise to all the varied forms of legal controversy. Mr. Grover's attention has been solely devoted to these affairs. He has not concerned himself with other matters, and has taken no part in political exploits or in other work not connected with his profession and particular position.

His high character as a lawyer is well known, and among the well informed is perhaps sufficiently appreciated, although in such a sketch as this it is difficult of description. The fact that he has for so long a period been at the head of the legal department of the Great Northern, with all that the fact implies, is enough to say.

Mr. Grover married Miss Virginia A. Townsend, who was born in Cayuga county, New York, and they have two daughters, Virginia L. and Myra E. Grover.

#### MARCUS D. MUNN.

Marcus D. Munn, of St. Paul, was born at Southington, Connecticut, February 22, 1858, the son of Charles E. and Eliza Munn. He is a graduate of Yale college, and was educated as a lawyer in the law school of that institution. He was admitted to the bar at New Haven, Connecticut, in June, 1883, and in December of that year came to St. Paul.

Upon coming to St. Paul Mr. Munn engaged, in partnership with Hon. John M. Gilman, in the general practice. In 1885 he was appointed assistant county attorney of Ramsey county to Hon. J. J. Egan, and held this position for four years, or until 1889. He was a most efficient prosecutor and won real distinction in the position. He made an enviable reputation in his conduct of the prosecution in the case of the State vs. Olson, a murder case, and of the State vs. Reid (reported in 39 Minn.), a rape case, in each of which he secured a conviction; and he also prosecuted in the State vs. Horton, wherein the defendant was accused of murdering his wife and child, but secured an acquittal. In each of these cases the accused was represented by eminent counsel, who made a vigorous fight all along the line of defense, contesting every point with determination and ability.

Mr. Munn was also counsel for the county of Ramsey County vs. Chicago, Milwaukee & St. Paul Railway Company, finally decided in the supreme court in 1885 (reported in 33 Minn.), and which decision became leading upon the subject of the taxation of certain lands owned by railroads. The decision in favor of the county, according to Mr. Munn's contention, was rendered in the lower court by Judge Brill and the sustaining opinion in the supreme court was written by Judge Dickinson.

In the notable contested election case of Dunn vs. Day, in the state senate in 1895, Mr. Munn was the counsel for Dunn. The question was whether or not Day, in becoming acting lieutenant governor, by virtue of his position as president pro tem. of the senate, had not ceased to become a state senator, thereby creating a vacancy which had been filled by the election of Dunn. The senate decided in favor of the contention of Mr. Munn that such a vacancy had been created, and seated Mr. Dunn.

Recently Mr. Munn has attracted extensive public attention and a national reputation owing to his connection with the so-called merger cases. He was the associate counsel for Attorney General Douglas in behalf of the state of Minnesota against the Northern Securities Company, brought in the supreme court of the United States in February, 1902, and made the argument for the state in its contention in that court. He is also associate counsel for the attorney general in the merger case of the state of Minnesota against the Northern Securities Company, the Northern Pacific Railroad Company and the Great Northern Railroad Company. The points raised by Mr. Munn in these cases and so ably contended for by him, have engaged not only the attention and comment of lawyers everywhere, but of the leading editors and public writers throughout the country.

Mr. Munn is associated in practice with N. M. Thygeson, the firm style being Munn & Thygeson. They practice in all state and federal courts and are general counsel for the Twin City Rapid Transit Company (or the street railway company of St. Paul and Minneapolis), and

special counsel for the Minneapolis, St. Paul & Sault Ste. Marie Railway Company (or the "Soo" Line), and the Canadian Pacific and Duluth, South Shore & Atlantic Railways at St. Paul. Mr. Munn is prominently identified with the legal associations of the state, and is lecturer on constitutional law in the St. Paul law college.

Mr. Munn married Gertrude Alling, of New Haven, Conn., in June, 1887, and has three children. He is a member of the order of Free Masonry and of other civic organizations in his adopted city, in whose general welfare he has always taken an active interest.

#### CHRISTOPHER D. O'BRIEN.

Christopher D. O'Brien, of the St. Paul bar, is a native of Ireland, and the son of Dillon O'Brien, who was one of the most distinguished Irish-American citizens of the northwest. Dillon O'Brien came to America with his family in 1850, and was a man of wide education and literary talents. He took an active part in advancing the interests of the Irish-Americans, and was much loved by the people of Irish nationality in this part of the country.

Christopher was born in Galway county, Ireland, December 4, 1848, and was but eight years old when the family removed to America. His education was begun at the government schools at La Pointe, Wisconsin, where his father was for some years a teacher. Later, when the family removed to Minnesota, he attended the schools at St. Anthony, where he completed his education. In 1866 he moved to St. Paul, and a year later entered the law office of Gorman & Davis, afterwards studying with the late Cushman K. Davis. He was admitted to the bar in St. Paul in January, 1870, and soon after his admission he was appointed assistant district attorney and continued in this position for three years, at the same time being a member of the law firm of Davis & O'Brien. In 1874 the firm became Davis, O'Brien & Wilson; in 1880 O'Brien & Wilson, and in 1887 C. D. & T. D. O'Brien.

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In 1874 Mr. O'Brien was elected county attorney of Ramsey county and served in that capacity four years. In 1883 he was nominated and elected mayor of St. Paul, an office which he filled to the entire satisfaction of the people and with credit to himself. Later he was lecturer on criminal law and procedure in the law department of the University of Minnesota. He has unusual faculties for imparting ideas and a clear conception of the law.

In politics Mr. O'Brien is a democrat, and his ability as a speaker has brought him into demand during the campaigns of his party. He is a member of the Roman Catholic church, and in October, 1872, he was married to Miss Susan E. Slater.

#### EUGENE G. HAY.

Eugene G. Hay, of the Minneapolis bar, was born in Charlestown, Clark county, Indiana, March 26, 1853. His parents were Dr. Andrew J. and Rebecca (Garrett) Hay, both of Scotch-Irish descent.

Eugene G. Hay received his education in the common schools and Barnett academy, of Charlestown. In 1876 he read law under Gordon, Lamb & Sheppard, of Indianapolis, and the following year was admitted to the bar and began practice at Madison, Indiana, in 1878, where he remained until 1886, when he removed to Minneapolis. During his residence in Madison he served two terms as prosecuting attorney. In 1884 he represented the fourth congressional district of Indiana in the republican national convention which named James G. Blaine for the presidency.

Immediately after his coming to Minnesota Mr. Hay took an active part in politics, and in 1888 was elected to the lower house of the Minnesota legislature from the twenty-ninth district, where he made an excellent record. He was one of the leaders of the Washburn senatorial campaign of that year, and contributed in a large degree to the election of Mr. Washburn to the United States senate.

On December 17, 1889, Mr. Hay's name was sent to the senate by the president for the position of United States district attorney for Minnesota, and he held that office until 1894.

Mr. Hay is a staunch republican and has always been active in behalf of his party's success. He has been very efficient and successful as a speaker, and this has brought his services in demand in every state campaign.

Prior to his appointment as district attorney he was in partnership with C. S. Jelly and L. K. Hull, the style of the firm being Jelly, Hay & Hull. Upon his retirement from office he resumed his law practice in Minneapolis, and conducts his business alone. He is president of the Hennepin County Bar Association and a member of the Masonic fraternity.

Mr. Hay was married November 4, 1891, at Indianapolis, Indiana, to Eleonora Farquhar.

Since the above sketch was prepared Mr. Hay has been called by President Roosevelt to the position of appraiser of customs at the port of New York. Mr. Hay is rapidly attaining a high literary reputation through his contributions to leading magazines.

#### JAMES CLARK MICHAEL.

James Clark Michael, corporation attorney of the city of St. Paul, is a native of Virginia, born in Preston county, March 19, 1863. His parents were John A. and Nancy Hamilton (Ormond) Michael. His ancestors, who were of Scottish, Welsh and German extraction, were among the early settlers of New York and participated in the wars of the revolution and of 1812. On the maternal side of his family Mr. Michael is directly descended from the Hamilton family of Scotland and of Alexander Hamilton.

James C. Michael's early education was obtained in his native county, which was supplemented with a classical course at West Virginia State University at Morgantown, completing four years' work in about one-half the time. His education was obtained through his

## EDWARD G. ROGERS.

Edward G. Rogers was born in Michigan. He became a resident of St. Paul in 1866 and was engaged in the practice of law at that place for many years. Mr. Rogers had a large practice and was employed in many important suits, both in the federal and state courts.

Mr. Rogers has been a lifelong republican. He was county attorney of Ramsey county for the years 1877 and 1878 and a member of the lower house of the state legislature in 1887. Mr. Rogers was elected clerk of the district court of Ramsey county in 1894 and is now serving his third consecutive term as such clerk.

Mr. Rogers is a member of the Minnesota and Commercial clubs, of the Chamber of Commerce and of various secret societies. He is recognized as one of the leading spirits in all affairs that tend to benefit St. Paul and the northwest.

## GEORGE P. WILSON.

Geo. P. Wilson, of the Minneapolis bar, ex-attorney general and prominent in the legislative history of Minnesota, and a well known lawyer, is a native of Pennsylvania, born at Lewisburg, Union county, in 1840. His education was completed in Bucknell university, in his native town, and in the Ohio Wesleyan university at Delaware, Ohio. He came to Minnesota in 1860 and located at Winona, then a mere settlement, and after a two years' course of study in the offices of Lewis & Simpson and the late Hon. Wm. Mitchell, of the supreme court, was admitted to the bar at Rochester, Minnesota, in October, 1862.

Upon his admission he at once entered the active practice and has risen in his profession to eminence and distinction. His experience has been very large, covering the entire range of American jurisprudence and dealing with all the important general questions of the law as well as with many particular subjects. During his forty odd years of professional life he has been counsel in so many cases of importance—



*Edward G. Rogers*







Mr. J. Wilson

not of mere notoriety—that they cannot here well be enumerated. His latest connection with a cause celebre was as associate counsel for the plaintiff in *Minnesota vs. The Northern Securities Company* and the *Northern Pacific and Great Northern Railway Companies*. His practice for some time past has been chiefly in the line of corporation law cases, and at present he is special counsel for the *Minneapolis Chamber of Commerce*, *G. W. VanDusen & Co.*, the *VanDusen-Harrington Company*, the *Atlas*, *National*, *Imperial*, *St. Anthony*, *Dakota* and other elevator and grain companies and business firms.

When a very young man, in 1864-5, he was assistant secretary of the *Minnesota state senate*, and was secretary of that body in 1866-7. He was county attorney of *Winona county* for six years, or from 1865 to 1871. In 1873 he represented *Winona county* in the house of representatives. He was attorney general of the state of *Minnesota* for three terms, or six years, from 1874 to 1880. In 1898 he was elected to the state senate from the *Forty-first district* for a term of four years, and re-elected in 1902 to succeed himself. In 1871 he was by appointment a *United States commissioner* on the *Southern Pacific Railroad*.

While in public life Mr. Wilson was always efficient and faithful as a servant of the people and did much valuable work. He was especially serviceable as attorney general at a period when the laws of the state were undergoing original construction and many important precedents were being established. The acceptability of his service was attested by his repeated elections, and he is yet remembered by the legal fraternity for many incidents in his official career. As state senator he has been active in promoting valuable legislation and is prominent in all the work of the legislature. Among the many meritorious measures of which he is the author and which he has pushed to enactment is the bill by whose provisions life convicts in the penitentiary may be admitted to parole after twenty-five years' imprisonment.

General Wilson is a member of the *Methodist Episcopal church* and belongs to the *Masonic order*. In politics he has always been a republican. He was married September 26, 1866, to *Ade H. Harrington*, a daughter of *Wm. H. and Miranda Harrington*, who were among the

early settlers of Winona. General and Mrs. Wilson have three children, viz., Jessie M., now Mrs. Wm. R. Sweatt, of Minneapolis, Walter H. and Wirt Wilson.

#### FRANK HEALY.

Frank Healy, present city attorney of Minneapolis, was born in Onondaga county, New York, December 27, 1854, but has resided in Minnesota since he was two years of age, or since 1856, when his parents came to the state. His education was completed in the State University of Minnesota, from which he was graduated in 1882 with the degree of B. A. Two years later he graduated from the law department of the State University of Michigan with the degree of LL. B., and the same year was admitted to practice in the supreme courts of both Michigan and Minnesota. He located in Minneapolis, where he has since been in active and successful practice, and has attained prominence in his profession.

Mr. Healy has been city attorney of Minneapolis since January 1, 1897. He has administered the important affairs of his office with the highest degree of efficiency and to the entire acceptance of the community, as is demonstrated by long retention in office. The position is one of large responsibility, involving a knowledge and application of the principles of law over a wide range, and demanding much attention to detail and particular work. To be a successful attorney for a large city means a great deal of hard work and the employment of ability of a high order.

Mr. Healy was married in Minneapolis in 1889 to Miss Marie Louise Henry. They have two children, a son and a daughter.

#### RILEY H. MARDEN.

Col. Riley H. Marden, deceased, was for many years one of the foremost attorneys at Fergus Falls, Minnesota. His death occurred there July 22, 1900, and he was mourned by the people of the north-



Frank Italy







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western part of the state, with whom he was a general favorite, not only as a lawyer, but as a neighbor and citizen.

Col. Marden was born in Vermont in 1837, and was one of a family of thirteen children. His father was living at the time of his death and had reached the age of 92 years.

Col. Marden grew to manhood in the village of Randolph, Vermont, and at the outbreak of the civil war he enlisted in the Fourth Vermont Volunteer Infantry, one of the first regiments to reach the front, and which served with distinction in the Army of the Potomac throughout the war, serving in all the battles in which that army was engaged. In 1863 Col. Marden was discharged because of being incapacitated from wounds received in battle, and returned home. Shortly after reaching home he was married to Emily E. Clifford. In the spring of 1864 he had sufficiently recovered from his wounds to admit of re-enlistment, and he joined a company of Vermont sharpshooters. His record was such that he was offered the command of a colored regiment, accepted, and became a colonel. His regiment served with distinguished gallantry until it was practically annihilated in the mine explosion before Petersburg. Colonel Marden was wounded, reported dead, and it was three weeks before his wife learned that he was still alive.

While convalescing in hospital he began the study of law and made such rapid progress in his self-education that shortly after returning home he passed the examination and was admitted to the bar of Vermont.

He came to Fergus Falls in 1882 and at once engaged in active practice, which continued to the time of his death by heart failure. He was one of the city justices for several years.

Colonel Marden's only daughter is deceased. His only son is Mr. Charles S. Marden, the prominent and well known attorney at Barnesville, Minnesota.

## CHAPTER XV.

### COLLEGE OF LAW OF THE UNIVERSITY OF MINNESOTA.

BY WILLIAM S. PATTEE, LL. D.

By section four of article eight of the constitution of the state of Minnesota the location of the state university, as established by then existing laws, was confirmed; and the legislature in the year 1862, in section two of chapter one of the session laws of that year, provided among other things for the establishment of a department of law as one of the five general departments of the institution. But not until the spring of 1888 did the regents provide for the organization of such a department. Then the regents elected William S. Pattee, of Northfield, Minnesota, as professor of law in the university, who was to act as dean of the faculty of law when such faculty should be organized. Before the close of the academic year of 1888 a faculty had been selected from the lawyers of Minneapolis and St. Paul. Public announcement of the opening of the college of law in September of that year was made, and a room for the department was set aside in the basement of the main university building upon the campus.

On September 11, 1888, the college of law of the University of Minnesota was formally opened with an address by Dean Pattee, delivered in the chapel, then located in the upper story of the main building. Several of the regents and various members of the faculty of the university were present, also the student body in general, and twenty-seven students who had come to matriculate in the new department.

The next day thirty-three students of law assembled in the Hermean room in the basement of the main building, which room had been set aside for the use of the newly established college. The subject of contracts was the first to be presented, and at this time began the regular work in the study of jurisprudence in the University of Min-

nesota. During the first year sixty-seven students enrolled in the legal department, three of whom had already studied law for a year or more elsewhere and had now come to take their second and last year of study in the new college of law. The course of study covered a period of two years only, which was then the case in nearly every law school in the country. At the end of the first year the three advanced students graduated as the first class upon whom the degree of LL. B. was ever conferred by the University of Minnesota.

During the second year the number of students increased to just twice the number in the first year, there being enrolled one hundred and thirty-four students. Of this number forty-four graduated at the close of the year as the first regular class whose members had taken the full course of two years prescribed by the regents for the college of law. The library consisted of a few sets of state reports and less than fifty volumes of text books, which were placed in the small room occupied by the department for the use of the students.

In October, 1889, the law building having been erected, the department moved into its present quarters, it being then supposed by the regents and faculty that the question of ample room could not again arise for at least a quarter of a century.

Every year witnessed an increase in the number of students, and a very gratifying growth of the library. In 1895 the course of study was increased to cover a period of three years, which step was taken with some fear, lest the change would prove too radical, as this was the first western college to propose such a forward movement. But other schools soon followed the example set them, and the action proved a very beneficial one for the cause of legal education. The state assisted from the beginning of the department in the upbuilding of the library, so there has been a gradual but steady growth in the facilities for gaining knowledge of the law as the number of students has from year to year increased.

During the first month of the department's history a night school was organized, which has continued until the present time, proving a most helpful institution for hundreds of young men. It brought to

them the means for obtaining a useful education when their circumstances were such as did not permit them to take advantage of the day school.

In 1895 a graduate department was organized and a course of study prescribed which covered the subjects of general jurisprudence, political science, constitutional history and jurisprudence, and some others which have varied from year to year. Only those who have received the degree of LL. B. are admitted to this course, which entitles those completing it to the degree of LL. M.

In 1898 a course of advanced work was offered in political history, comparative jurisprudence, Roman law and in the philosophy of jurisprudence, which course was intended to introduce the student to the broader fields of legal learning and to encourage and stimulate extensive search and profound scholarship. No definite time was prescribed within which the work required for graduation should be performed, but students are permitted a reasonable time to prepare and present their final theses, the acceptance of which by the faculty entitles the candidate to the degree of D. C. L.

This is the close of the fifteenth year of the school's history, and during this time the college has accumulated thirteen thousand volumes of books; has increased its teaching force from one to four professors who devote all of their time to the department, besides eleven lecturers who give instruction in particular branches of the law; has organized its system of instruction according to the principles approved by the oldest and best legal institutions in the country; has established a system of courts conducted according to the rules of the district and supreme courts of Minnesota; has increased the requirements for the admission and graduation of its students to as high a standard as is adopted by the best law schools in America, except one or two schools whose circumstances warrant the requirement of a bachelor's degree for admission; has increased in attendance until it now ranks sixth in numbers among the law schools of the United States, and, if measured by the years of its existence, ranking first in numbers among the

law schools in the state universities of the country; and in addition to its development in the particulars already enumerated the college has graduated a body of young gentlemen who are making their influence felt at the bar and upon the bench of this and other states of the Union and in the halls of legislation. Many of them are taking high rank in the profession of law. One is now assistant United States attorney, one assistant United States district attorney, one assistant attorney general of Minnesota; another is judge of the district court of this state; another a judge of the circuit court of South Dakota, and still another has just completed a term upon the district bench of Montana. At the present time one of the number is a state senator and twelve others are representatives in the lower house. A large number of the graduates are county attorneys in the various counties of the state, and many others hold lesser judicial positions throughout the state and the northwest. But of equal significance, if not of greater credit to the college, is the fact that among the graduates are many of the most successful, trusted and promising practitioners of the commonwealth. Institutions, like individuals, are known by the results they achieve. As a person's character is largely known by the deeds he performs, so an educational institution's value to the world is largely known by the intellectual stimulation, moral inspiration and professional excellency it awakens or secures in the students who pass through its courses of study.

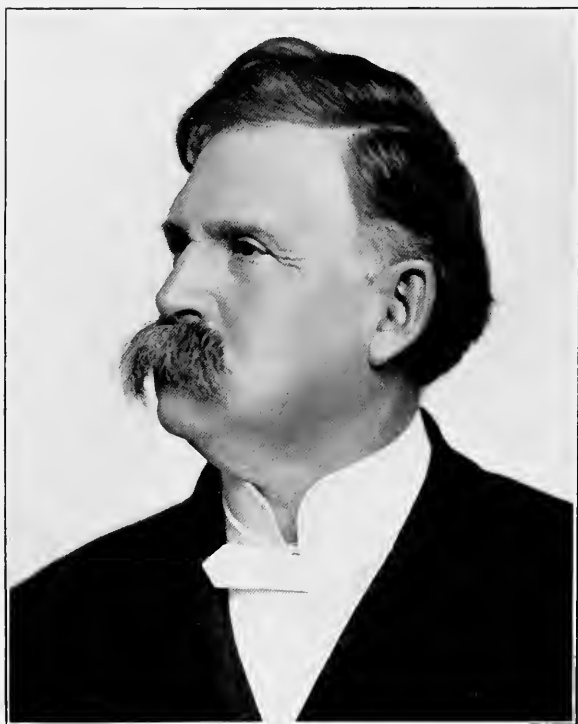
At the close of this fifteenth year of the school's history it has been highly favored, through the legislature, by an appropriation of thirty thousand dollars for a necessary addition to the present law building and its enlarged equipment. This marks the beginning of another fifteen years and many more of expansion in all that goes to make up a powerful and healthy institution. It increases the facilities for legal study, imparts hope and inspiration to the faculty and insures a continued public confidence in the high character of the work which the department is doing for the legal profession especially, and for the cause of legal education in general, throughout the northwest.

## WILLIAM S. PATTEE.

In his argument in the famous Dartmouth college case, Daniel Webster pleaded with fervor for the "literary men, who have devoted their lives to the instruction of the youth." Indeed, the generous, conscientious teacher does not give some of his best efforts, or some of his best years, to this glorious work; he gives his life to it. If ever this was true, it certainly applies to the subject of this sketch. William S. Pattee, LL. D., familiarly known as "Dean Pattee," of the law department of the University of Minnesota.

Born September 19, 1846, in the state of Maine, which has sent to the northwest so many great citizens, Mr. Pattee early lost his father. It is a favorite theme to speak of heroic struggles and ultimate successes; but the many privations, the obstacles to overcome, the hours of changing hopes and discouragements, are known to him only who fought the battle. It would make interesting reading, perhaps, to recount how young Pattee maintained himself and assisted his mother by working during the summer on a farm and studying in winter; how he prepared himself for Bowdoin college, entering the sophomore class of that well-reputed institution, graduating in 1871, and, practically before finishing his course, being elected superintendent of public schools in Brunswick, Maine. He was married to Julia E. Tuttle on November 30, 1871. Then we should mention that he taught successfully Greek in the University of Lake Forest, Illinois, until he was elected superintendent of public schools in the city of Northfield, Minnesota. How much work, application and perseverance there was crowded into these few years it is impossible to estimate, and yet these were but the preparatory steps to a life that has added such lustre to the name of Minnesota, wherever mentioned in connection with legal education.

It was in August, 1874, that Mr. Pattee assumed his work in Minnesota. To-day a stretch of thirty years lies behind an activity that has rarely been equaled, and perhaps never surpassed. The greatest and profoundest work of Dr. Pattee commenced when, in



**WILLIAM S. PATTEE,**

Dean of the College of Law, University of Minnesota



the spring of 1888, he was asked by the regents of the University of Minnesota to organize and establish in that institution a department, or college, of law.

The fourteen years, from 1874 to 1888, were used to the greatest possible advantage by a close supervision and reorganization of the schools of Northfield, a most systematic and thorough reading of law in practically all its branches, a busy and flourishing legal practice in the same town, and a prominent activity as a member of the house of representatives in the legislature of Minnesota in 1884-5. In each calling and public trust Mr. Pattee distinguished himself as conscientious, hard-working and true. Such then, in the briefest form, is the record of Dean Pattee, before he took charge of the college of law in the University of Minnesota.

To the writer of this sketch it seems immaterial that the department of law started without building and without a working library, except as furnished by the private books of its founder. Too much stress is laid in our modern, gigantic and endowed institutions upon these auxiliaries. The great college of law, as it stands to-day, in numbers of attendance surpassed only by two or three colleges in America, was built up by the personal magnetism of a *man*, Dean William S. Pattee.

"Boys, I advise you, before you are good lawyers, be first of all *men*." This grand advice rings in my ears, as it rung into the ears of all the hundreds of pupils that have sat at the feet of the great teacher. It is true, and evident now, none could have piloted the school so successfully as he did through the early stages of meager support and attendance, none could have so persistently insisted on a due consideration of its needs by the representatives of the people, and very few could have expended and applied the available funds to such good advantage—all this hardly needs emphasis—it is plain, visible, tangible. But the imperceptible influence for good upon the students, the great moral force, bending their brains and hands toward industry and conscientiousness, the stimulus by example and precept, all this can-

not be estimated and repaid. It is the work of love, the devotion to the youth, the giving of one's life to a grand and glorious end.

Dean Pattee is unsurpassed as a concise and lucid lecturer. In the early stages of the institution he lectured on almost all the branches of jurisprudence. Later students have heard him in the undergraduate course on contracts and equity jurisprudence. But those who entered the college shortly after its formation recall his fine lectures on torts, criminal law, domestic relations, law of real property, law of personal property, evidence and pleading. All this stupendous work in connection with the difficult administration of the college.

In the advanced course of the master's degree Dean Pattee confines himself chiefly to the general jurisprudence and the philosophy of jurisprudence in its elementary form.

But his profound learning is more fully realized by those who had the rare privilege of taking the newly established course for the degree of D. C. L. In conjunction with such able teachers and scholars in their own departments as W. W. Folwell, LL. D., Judge Pierce (lecturer on comparative jurisprudence), Howard Abbott (Roman law), Dr. Pattee's extensive discourses and researches in the realm of psychology and philosophy of law will never be forgotten by the grateful group of students who took this advanced course. Dean Pattee's logical mind and clear perceptions were a safe guide, whether it led through the intricate and abstruse philosophy of Plato or the more practical delineations of Aristotle, whether anon elucidating the hazy theories of Berkely, or the stern logic of Immanuel Kant. From the germ-theories of some Roman genius, whose views were dominating the times, to the Monads of Leibnitz, the ultra-materialistic views of Büchman and the liberal and advanced thought of St. George Mivart, what a vast realm, what food for the unbudding mind, what staff and stay for the trials and discomforts of active life! He who has looked so deep into the achievements of the centuries and has chosen to impart this insight and knowledge must be truly reckoned among the great teachers of the day.

Honors have been bestowed upon the illustrious dean of our law school by other colleges, and appreciation of his work comes from his associates and the president of the university; but the gratefulness of his students, who now represent the vast host of over three thousand and who are scattered over the whole northwest, some already in high judicial and other positions, should recompense, although but in a small degree, for duty well performed, trust well administered and devotion without stint or thought of adequate reward.

## CHAPTER XVI.

### WASHINGTON COUNTY BENCH AND BAR.

BY A. D. EASTON.

The first attorney to locate in Stillwater was Henry L. Moss, the date of his arrival being the spring of 1846. Two years later came Morton S. Wilkinson and E. K. Bartlett. Theodore E. Parker came in 1850; Levi E. Thompson and S. J. R. McMillan in 1853, and William M. McCluer in 1856.

Michael E. Ames, a somewhat noted criminal lawyer, located in Stillwater in 1851; remaining, however, but a few years. He removed to St. Paul, where he succeeded in building up a large practice. He died in 1860.

In 1854 the law firm of Thompson, Parker & Dawson was organized in Stillwater, and immediately took a leading position in the business affairs of the new territory. Mr. Dawson was a resident of Hudson, Wisconsin, and the firm had a strong grip on the legal business of the St. Croix valley.

The Stillwater partners were Levi E. Thompson and Theodore E. Parker, who had been schoolmates in Gouverneur county, New York, where they were born. In company with William Mower, they laid out what is still known as Thompson, Parker & Mower's addition to Stillwater. Mr. Thompson died in 1887 and Mr. Parker in 1890, the latter in St. Paul.

Fayette Marsh, who located in Stillwater about 1860, occupied a prominent place among the legal fraternity for many years, and held many positions of honor and trust. He was considered one of the ablest attorneys in the St. Croix valley, being conspicuously successful as a jury lawyer. He accumulated considerable property and was counted among the wealthy citizens of the place, but was unfortunate

in later life, and at his death in 1901, but little remained of the accumulations of a life time.

Isaac Van Vleck, rotund and jolly, came here in the early days, practiced law for many years, held office of city justice several years, and has long since gone to his reward.

Bower Preston also practiced law in Stillwater as early as 1855, removing to Hastings about 1860.

A. C. Bryant appears on the records as a practicing attorney in 1851, but remained only a few years.

About 1858, H. N. Setzer and S. H. Gates located here; also W. H. Burt. Mr. Setzer took a prominent part in the business affairs of the city, was warden of the state prison in 1858 and '59, and held other positions of responsibility.

A. B. Green, an attorney, came in 1855, was immediately elected to office, and left here at the breaking out of the civil war. He has been dead many years.

C. P. Gregory and Charles Norgord came about 1870, both members of the legal fraternity, were both chosen to city offices, and both died many years ago.

Other legal lights of more or less brilliancy have dawned upon the community at various times. Some have remained and some have gone hence.

Ira W. Castle, a brother and partner of J. N. Castle, was well equipped mentally for his chosen profession, but died while yet the shadows were falling to the west.

E. G. Butts, Rudolph Lehmicke, Hiram Calkins and Percy B. Smith were somewhat prominent in the realms of jurisprudence, but being fortunate in securing preferment in an official way, they were naturally drawn apart from the grind of every day law practice.

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#### LOUIS S. MANWARING.

Louis S. Manwaring, of the firm of Manwaring & Sullivan, was born in Iowa and located in Stillwater in 1882. He received his edu-

cation at the Iowa state college and the University of Wisconsin. He is admitted to practice in the courts of Minnesota and Wisconsin, and United States courts. He has held the office of special municipal judge in this city and county attorney of Washington county. He is married, and is a member of the Masonic order.

#### F. V. COMFORT.

F. V. Comfort, who located in Stillwater more than thirty years ago, received his education in Portage county, Wisconsin, and studied for the bar with the late Judge Hollis R. Murdock. He was admitted to practice in all the courts of the state and United States.

#### GEORGE H. SULLIVAN.

George H. Sullivan, who was born in this city in 1867, received his education in the Stillwater high school and in the University of Wisconsin law school. He is a law partner of L. S. Manwaring and served as county attorney one term, and is at present attorney for the city. He is admitted to practice in the supreme courts of Wisconsin, Minnesota and the United States. He is married and is a member of the Masonic and other fraternal societies.

#### HON. JAMES NATHAN CASTLE.

Mr. Castle was a Canadian by birth, having been born in Shefford county, Canada, in 1836. He came to Minnesota in 1862, located in Afton, this county, where he taught school a few years. He then completed his law studies with Smith & Gilman, of St. Paul.

In 1866, having located at Stillwater, he was elected county attorney of Washington county on the democratic ticket, although the county was largely republican.

In 1868 he was chosen state senator for two years, defeating the late John McKusick. In 1878 he was elected to the same position for four years, receiving a majority of 222 votes over Wm. M. McCluer.

In 1890 he was elected a member of congress from this district, defeating Hon. S. B. Snider of Minneapolis, who had held the position for two years preceding.

Mr. Castle was deemed one of the ablest attorneys in the state, and his services were in demand in the management of important cases where large interests were involved.

He was married in 1893 to Mrs. Mary Lamb, a sister of Hon. John R. Fellows, who was at that time a congressman from New York City.

Mr. Castle died suddenly of heart failure at his home in this city, January 2, 1903.

#### HENRY L. MOSS.

Henry L. Moss was born in Augusta, Oneida county, New York, on March 23, 1819. His early education was in the common schools and academy of his native town. He entered Hamilton college, where he graduated in June, 1840.

He decided to make the legal profession his future vocation, and immediately after his graduation from college entered the law office of Carpenter & Osborn, of Waterville, New York.

In 1841 he removed to Sandusky, Ohio, where his parents lived, and entered the law office of Parish & Sadler, and in January, 1843, he was admitted to practice in the supreme court at Columbus, Ohio.

In the summer of that year he took a trip of pleasure and observation westward through the state of Michigan and territory of Wisconsin, traveling from Milwaukee to the Mississippi river in the only public conveyance then in use, a two-horse stage wagon.

The business activity of the towns in the lead mine district of the southwestern part of the territory interested him, and in June, 1845, he removed to Platteville, Grant county, and entered actively upon the practice of his profession, taking a prominent part in the litigation incident to a new mining community.

When the state of Wisconsin was organized in 1848 Mr. Moss had a foresight of the certainty of a territorial organization beyond the

western boundary of Wisconsin, and in April, 1848, he removed to Stillwater.

When the territory of Minnesota was organized in 1849 President Taylor appointed Mr. Moss United States district attorney, and he held that office until his successor was appointed upon the advent of the administration of President Franklin Pierce.

He was married on September 20, 1849, to Amanda Horsford, at her home in Charlotte, Vermont. They made Stillwater their residence until June, 1851, when they removed to St. Paul.

In October, 1863, Mr. Moss was again appointed United States district attorney for Minnesota by President Lincoln, and held the office until 1868.

It was during these years that many new and important questions came before the United States courts for decision—questions arising under the internal revenue law and recruiting laws, and which required great labor and investigation. The legal proceedings relating to the same were said then to be ably handled by Mr. Moss. Time seems to have sanctioned that eulogy.

After his retirement from the United States district attorneyship he did not engage in the active general practice of his profession. He was almost continually employed in financial and insurance matters, and up to the time of his death might be found at his office desk, apparently as active as in his youthful days. His death occurred at Excelsior, Lake Minnetonka, July 20, 1902. His widow survives him.

#### JOHN CLINTON NETHAWAY.

John Clinton Nethaway, who was born in Albany, New York, in November, 1857, came west and located in Stillwater in June, 1879, where he has since resided constantly since that date, engaged in the law practice. In 1882 he associated himself with J. N. Searles and Fayette Marsh, the firm being known as Marsh, Searles & Nethaway.

He was elected judge of the municipal court of this city in 1884, holding the position until April, 1894—having been nominated and

elected four times without opposition. At the date mentioned he declined to again be a candidate. From 1898 to 1900 he held the position of city attorney, and since the latter date he has been the attorney of Washington county.

Mr. Nethaway, was the leading attorney for the contestants in the famous will contest wherein the legality of the will of the late Isaac Staples was involved, and after a trial lasting nearly forty days by a jury, a verdict was secured declaring the will null and void.

Mr. Nethaway has achieved prominence as a criminal lawyer, but the practice being distasteful, he abandoned that branch of the law in 1896. He has conducted eleven murder trials, securing an acquittal in every case but two. He defended Charles Stucky, cashier of the state bank of Duluth, charged with embezzlement, securing his acquittal after a trial of nearly three weeks.

In 1897 Mr. Nethaway represented the warden and deputy warden of the Minnesota state prison at the investigation conducted by the special commission appointed by the governor to examine the charges against these officers, filed by prison inmates, and after a contest of nearly two months, secured a complete exoneration of his clients from the charges preferred.

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#### FREDERICK W. GAIL.

Frederick W. Gail, who was born in Erie county, New York, located in Stillwater, Minnesota, October, 1882.

He was educated in the common and high schools of Corry, Pennsylvania, and studied law at Titusville, Pennsylvania, under Roger Sherman, and at Stillwater while acting as official stenographer for the first judicial district of Minnesota, from October, 1882, to November, 1887, and was admitted to practice in November, 1884, by the district court at Stillwater, where he has been since in practice.

He was in partnership with F. H. Ewing, now of St. Paul, a short time; then with Mr. Ewing and J. N. Searles, under the name of Searles, Ewing & Gail, from February, 1885, to October, 1887, and

with Mr. Searles from October, 1887, to April, 1893; and alone since the latter date.

Mr. Gail practices in both state and federal courts. He took an active part in the extensive litigation resulting from the failure of the Northwestern Manufacturing & Car company, Seymour, Sabin & company, and allied corporations at Stillwater in 1884, and continuing for ten years; his firm representing the receivers of Seymour, Sabin & Co., The Union Depot, Street Railway & Transfer Co., and various groups of large creditors of the Northwestern Manufacturing and Car Co. He was attorney for the legatees and devisees under the will of Isaac Staples, who died at Stillwater in 1898, and, assisted by Hon. Charles E. Flandrau, of St. Paul, represented them in the long and stubbornly contested litigation over the validity of the will, determining the distribution of an estate of a million and a half dollars, and which, both as to the value of the property and the amount of legal work involved, was the most important and extensive single item of litigation ever before the courts of Washington county.

He was one of the active movers in the reorganization of the state bar association in 1900-1, a member of the governing board since that time; chairman of the committee on revision of statutes which brought to the attention of the legislature of 1901 the urgent need of a revision and secured the appointment of the commission now engaged in that work; he was treasurer of the association in 1902, and is now chairman of its committee on legal biography.

In politics he has always been a thorough believer in and active supporter of the republican party, but has never held or sought political office, having found abundant scope for his energy and ambition, as well as his greatest pleasure, within the realm of his profession.

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#### ALPHEUS EDWIN DOE.

Alpheus Edwin Doe was born in Stillwater, November 2, 1863. He received his early education in the Stillwater public schools and completed his studies at the University of Michigan. He studied for





*J. H. Charles*

the bar in the law department of the Michigan university, and with Fayette Marsh of Stillwater.

He was admitted to practice June, 1886, at Ann Arbor, Michigan, and in July of that year at Stillwater.

Judge Doe is secretary of the Washington county (Minnesota) bar association, and also municipal judge of the city of Stillwater, to which office he was first chosen in November, 1897, for a term of four years, and re-elected in November, 1901. He also holds the position of court commissioner of Washington county.

Judge Doe is a member of the Modern Woodmen of America, and he served seven years in Company K, N. G. S. M.

He was married to Miss Bertha Sargent of Stillwater, September 9, 1891.

In politics he has always acted with the republican party.

Judge Doe was associated in the practice of law with the late J. N. Castle for nine years, the partnership only closing with Mr. Castle's death.

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#### HUGH H. GILLEN.

Hugh H. Gillen, a native of Wisconsin, located in Stillwater in July, 1888, where he has been engaged in the practice of law in the courts of Minnesota, Wisconsin and the United States. He received his education at the state normal school in River Falls and studied law at the Wisconsin university. He has held the office of city attorney two terms.

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#### JASPER NEWTON SEARLES.

Jasper Newton Searles, of Stillwater, Minnesota, was born November 9, 1840, in North Royalton, Ohio, to Jonathan D. and Harriet E. (Bronson) Searles. He received his early education in the public schools of Cleveland, then known as Ohio City, and later entered Hiram college. At the age of fifteen, in June, 1855, his parents moved to Hastings, Minnesota, and young Searles entered a select school at that place. When the war of the rebellion broke out he

enlisted as a private in the First Minnesota Volunteer Infantry. Meritorious conduct soon caused him to be raised to the rank of second lieutenant, from which rank he was promoted to first lieutenant and later to captain in the regiment, which office he held when the regiment was mustered out in the spring of 1864. Returning to private life, Mr. Searles again took up his studies, entering the Ann Arbor law school, from which he graduated in 1869, and was at once admitted to the bar at Hastings. He has worked up a large general practice, but devotes his time more particularly to logging and corporation cases, having been special counsel for Seymour, Sabin & Company; Northwestern Manufacturing and Car Company, and now counsel for the Clearwater Logging Company; Stillwater Water Company; Stillwater Gas and Electric Light Company; St. Croix Lumber Company, etc.

Mr. Searles appears in all the state and United States courts, and has been associated in the law business with various firms, his first partnership being in the firm of Claggett & Searles. Then he moved to Stillwater and was in the various firms of Marsh & Searles; Searles, Ewing & Gail, and Searles & Gail. At St. Paul it was Kneffner, Fauntleroy & Searles. Mr. Searles is a man of reliance and integrity, whose success has been achieved by hard work and close application. He is a member of the Masonic fraternity and a man of social temperament, quick witted and keen. He was married in Hastings to Miss Sarah L. Tozer, by whom he has three children, viz., Lewis T., Jasper E. and Marcia H., now Mrs. W. W. Conklin. In religious matters Mr. Searles affiliates with the Episcopalian church.









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